

EXHIBIT BBB

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
CASE NO. 1:19-cv-06471

- - - - - x

McDONALD'S CORPORATION,
Plaintiff,

v.

VANDERBILT ATLANTIC HOLDINGS LLC,
Defendant.

- - - - - x

CONFIDENTIAL

ZOOM VIDEOCONFERENCE DEPOSITION OF
MICHAEL MEYER
August 17, 2021

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ZOOM VIDEOCONFERENCE ORAL 30(b)6

DEPOSITION OF MICHAEL MEYER, taken pursuant to
Notice, commencing August 17, 2021, at 10:00
o'clock a.m., on the above date, before Catherine
M. Donahue, a Certified Court Reporter and Notary
Public in the State of New Jersey.

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1 A P P E A R A N C E S:

2 (All parties present via Zoom Remote)

3

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1 A P P E A R A N C E S: (Cont'd)

2 (All parties present via Zoom Remote)

3

4 ALSO PRESENT:

5 Stacy Howard

6 Sam Rottenberg

7 Tom Li

8 Carol DeMarco

9 Nat Lopez, Magna Tech

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1 (The witness is sworn by the
2 court reporter.)

3 M I C H A E L M E Y E R, called as a witness
4 by (Defendant), having been first duly
5 sworn by Catherine M. Donahue, a Notary
6 Public within and for the State of New
7 Jersey, was examined and testified as
8 follows:

9 EXAMINATION BY MR. KOH:

10 Q. Good morning, Mr. Meyer. My name is
11 Howard Koh. As you know, I'm counsel for the
12 defendant in this matter, Vanderbilt Atlantic
13 Holdings.

14 Throughout this deposition, I'm
15 going to refer to the defendant as Vanderbilt.

16 Will that be okay with you?

17 A. Good morning.

18 Yes, that's fine.

19 Q. Have you ever been deposed before?

20 A. Yes.

21 Q. How many times?

22 A. Approximately, five or six.

23 Q. You are an attorney; is that
24 correct?

25 A. Correct.

1 Q. So I assume that you're familiar
2 with the process, but just to go over the basic
3 ground rules, which are the same as you heard
4 when Mr. Walsh deposed Mr. Rottenberg, if you do
5 not hear or understand a question, please let us
6 know so that I may repeat or rephrase.

7 Does that sound fair?

8 A. It does.

9 Q. And if at any time you would like to
10 take a break, please answer the question that's
11 on the record and then we can arrange to take a
12 break.

13 Does that sound fair?

14 A. Yes.

15 Q. So, you said you have been deposed
16 five or six times. Is that what your testimony
17 was?

18 A. Correct.

19 Q. Okay.

20 And what were the nature of those
21 cases?

22 A. The nature of the first several
23 depositions was I served as a corporate
24 representative for a real estate developer in a
25 bankruptcy Chapter 11 matter, or a number of

1 matters.

2 And then, the second was a legal
3 malpractice claim involving a company I used to
4 work for.

5 Q. Any other depositions -- instances
6 where you have been deposed other than what you
7 have just described?

8 A. No.

9 Q. Okay.

10 You said you were the corporate
11 representative for a real estate developer in a
12 bankruptcy matter.

13 Can you tell us who that real estate
14 developer was?

15 A. The name -- so the Chapter 11
16 bankruptcy proceedings involved 20-ish related
17 companies, but the primary operating company was
18 called PRM Realty Group, LLC.

19 Q. And where was that bankruptcy
20 pending?

21 A. The Northern District of Texas.

22 MR. WALSH: Howard, before we
23 keep going, I just want to put something
24 on the record.

25 I just -- during the deposition,

1 I don't intend to object every single
2 time you ask a question that I consider
3 outside the scope of the 30(b)(6)
4 topics.

5 So I just want to -- in order to
6 keep things moving, I'm not going to
7 object every single time. I sort of
8 just want to have a standing objection
9 and just sort of reserve my right to do
10 that down the road.

11 Of course, if you don't agree, I
12 will object every time, but I don't
13 think that's probably not the most
14 productive use of our time today.

15 MR. KOH: Well, I agree it is not
16 a productive use. We don't have any
17 stipulations. I'm prepared to proceed
18 under the rules that apply by virtue of
19 the Federal Rules of Civil Procedure and
20 the local rules of the Eastern District
21 of New York.

22 Does that sound fair to you, Mr.
23 Walsh?

24 MR. WALSH: Well, will you
25 stipulate that I don't need to object

1 every single time that something may be
2 outside of the scope of the 30(b)(6)? I
3 think it is an easy ask.

4 MR. KOH: Yes, if you want to
5 preserve those objections and raise them
6 after we get the transcript back, I
7 suppose we could go through that.

8 Let's work through that offline
9 because I would like to know when I'm
10 going to get those objections in case I
11 need to deal with them.

12 MR. WALSH: Okay.

13 That's fine. Thank you.

14 MR. KOH: Very well. All right.

15 Catherine, can you read back the
16 last question and answer?

17 (Record read.)

18 BY MR. KOH:

19 Q. With respect to the legal
20 malpractice claim, you were the corporate
21 representative for what entity?

22 A. I wasn't serving as the corporate
23 representative. This was also related to PRM
24 Realty Group, but it was a dispute between two
25 parties unrelated to PRM Realty Group.

1 Q. So you were testifying in your
2 capacity as a nonparty witness?

3 A. Yes, I guess. I don't know the
4 technical term but, yes, that's sound right.

5 Q. Okay.

6 Have you testified at any other time
7 other than what we have discussed so far?

8 A. No.

9 Q. You testified earlier that you are a
10 lawyer. In what jurisdictions are you admitted
11 to practice?

12 A. The State of Illinois.

13 Q. Are you admitted to any federal
14 courts?

15 A. No.

16 Q. How long have you been a lawyer?

17 A. I graduated law school in 2007.

18 Q. From what law school?

19 A. Loyola University, Chicago School of
20 Law.

21 Q. Is anybody in the room with you
22 while we're doing this video deposition?

23 A. Not at the moment. But I did want
24 to just note that there may be some dog barking
25 and kids coming in and out. School starts

1 tomorrow.

2 Q. Good luck with the first day of
3 school. You must be relieved.

4 If anybody associated with this
5 case, including lawyers, joins you in the room,
6 will you please let us know?

7 A. Yes.

8 Q. Do you have any apps open while
9 you're testifying now, other than the apps
10 associated with this deposition?

11 A. Just Zoom and the Google Chrome with
12 the AgileLaw website up.

13 Q. Do you have your cell phone with
14 you?

15 A. I do not.

16 Q. Are you appearing today pursuant to
17 a 30(b)(6) notice that was served on McDonald's?

18 A. I believe so.

19 MR. KOH: Nat, can you bring up
20 Exhibit 1, please.

21 Let's mark that as Defendant's
22 Exhibit A.

23 (Notice of Deposition was
24 marked as Defendant's Exhibit A for
25 identification, as of this date.)

1 BY MR. KOH:

2 Q. Mr. Meyer, can you see Defendant's
3 Exhibit A?

4 A. Yes.

5 Q. Do you recognize it?

6 A. Yes.

7 Q. When for the first time did you see
8 it?

9 A. Approximately around the time it was
10 served.

11 Q. And you are appearing pursuant to
12 this Notice of Deposition?

13 A. Yes.

14 Q. Have you reviewed each of the topics
15 that are numbered 1 through 13 on the Notice of
16 Deposition and appear on pages 3 and 4?

17 A. Yes.

18 Q. Are you prepared to testify on
19 behalf of McDonald's with respect to each of
20 those topics?

21 A. Yes.

22 Q. Is there any topic listed there that
23 you are not prepared to testify upon?

24 A. No.

25 Q. What did you do to prepare for

1 today's deposition?

2 A. I met with counsel several times and
3 reviewed a number of documents.

4 Q. Can you recall how many times you
5 met with counsel?

6 A. I believe four, plus a call with
7 Magna tech.

8 Q. And what documents do you remember
9 reviewing?

10 A. Many documents that were in the --
11 that were produced by McDonald's. I don't
12 remember specifically. There was lots.

13 Q. When you say you met with counsel,
14 was that Mr. Walsh?

15 A. Mr. Walsh, Ms. Alvarez and
16 Ms. Howard.

17 Q. Did you meet with anybody else
18 besides Mr. Walsh, Ms. Alvarez and Ms. Howard?

19 A. As part of those meetings, we met
20 with Brian Cheung from McDonald's for a short
21 portion of one of the meetings and then the same
22 with Carol DeMarco for a short portion for one
23 of the meetings.

24 Q. Did you speak to anybody outside of
25 the presence of the attorneys you have listed in

1 order to prepare for this deposition?

2 A. No.

3 Q. Is there anything that would prevent
4 you from testifying here truthfully today?

5 A. No.

6 Q. What have you done to search for
7 documents related to this case, if anything?

8 A. As part of the preservation hold
9 process, I received an e-mail. I believe it is
10 called a litigation hold or a preservation hold,
11 and it has a number of categories of documents.

12 And then I had a call with a
13 paralegal from our in-house litigation team and
14 walked through all those categories and
15 identified which categories I had documents
16 related to this matter.

17 Q. Who sent you the litigation hold?

18 A. I don't recall. It would have been
19 one of the litigation department paralegals. I
20 don't remember which one.

21 Q. Who was the paralegal that you met
22 with when you walked through the documents
23 related to this matter?

24 A. The same. I don't recall. I can
25 get you that information.

1 Q. Okay.

2 Do you remember approximately when
3 you received the litigation hold?

4 A. It would have been, I believe, July
5 of 2019.

6 Q. This case was filed in November of
7 2019. Is it your testimony that the July before
8 that November, approximately five months before,
9 is when the litigation hold went out?

10 A. I believe so.

11 Q. Do you know who at McDonald's was
12 responsible for the collection and preservation
13 of documents related to this litigation?

14 A. The litigation, in-house litigation
15 team.

16 Q. Is there a head of the in-house
17 litigation team?

18 A. Yes.

19 Q. Who is that?

20 A. Hal Merck.

21 Q. Can you spell that, please?

22 A. Hal, H-a-l. Merck, M-e-r-c-k.

23 Q. Does Mr. Merck have a title at
24 McDonald's?

25 A. Vice president.

1 Q. Is Mr. Merck vice president of a
2 particular division, anything like that?

3 A. Commercial litigation.

4 Q. And physically who was responsible,
5 if you know, for the review of documents that
6 were produced to Vanderbilt in connection with
7 this litigation?

8 A. Our counsel, Pashman Stein.

9 Q. So I'm correct the way that it
10 roughly worked is that you or McDonald's issued
11 a litigation hold, documents were sent to
12 Pashman Stein, Pashman Stein did the review?

13 MR. WALSH: Objection to the
14 form.

15 And I just want to remind the
16 witness not to reveal any privileged
17 information during the course of your
18 answers.

19 MR. KOH: I will withdraw the
20 question and rephrase.

21 BY MR. KOH:

22 Q. Let's break this down into steps.

23 Is the first thing that happened in
24 terms of production of documents related to this
25 litigation that the litigation hold was issued?

1 A. Yes.

2 Q. And then did there come a time when
3 documents were gathered to be sent to Pashman
4 Stein so that they could be reviewed to
5 determine if they should be produced?

6 A. Documents were uploaded to a
7 database -- documents that were received that
8 were gathered as part of the litigation hold
9 were uploaded to a software.

10 Q. And what devices were reviewed to
11 create that upload?

12 A. I don't recall. I mean, I don't
13 know for every, for every -- what do you call
14 it -- person with potentially relevant
15 documents, I don't know which devices were
16 gathered for each of them.

17 But as I said, the litigation hold
18 lists all number of platforms, devices,
19 et cetera.

20 Q. Well, let's talk about your devices.
21 What devices that you had access to were
22 reviewed and had information uploaded from them?

23 A. My laptop computer. A paper file, I
24 believe. And then there were a number of
25 categories or types of, you know, areas of

1 storage that didn't apply to me; different
2 drives, shared drives, different software, cell
3 phone.

4 Yes, I think those are the big --
5 the broad categories.

6 Q. Just so I understand, your personal
7 cell phone was reviewed, and if there was data
8 on it, it was uploaded?

9 MR. WALSH: Objection to form.

10 MR. KOH: I will withdraw and
11 rephrase.

12 BY MR. KOH:

13 Q. Did you turn over your cell phone so
14 that it could be reviewed for relevant
15 documents?

16 A. I have a work cell phone, and there
17 were no relevant documents on my work cell
18 phone.

19 Q. Did somebody check or is that just
20 you're reporting that there were no relevant
21 documents on it?

22 A. We have to certify to all these
23 categories as part of the litigation hold, each
24 of the employees that receive the preservation
25 hold.

1 Q. Okay.

2 That wasn't -- I appreciate that you
3 had to certify. But my question was, did
4 anybody other than you review your cell phone
5 for relevant documents?

6 A. No.

7 Q. Do you know if McDonald's servers
8 were reviewed for relevant documents?

9 A. I assume so.

10 Q. But you're not certain?

11 A. I wasn't involved in that. Yes, I
12 wasn't involved in the actual gathering.

13 Q. Do you know if Carol DeMarco's
14 devices were reviewed in connection with the
15 production of documents related to this action?

16 A. She received the same litigation
17 hold. Same process; had a hold, had an
18 interview with our litigation department and
19 identified the areas where -- or the forums
20 where there may be relevant documents, and then
21 they were reviewed.

22 Q. Did you participate in that
23 interview?

24 A. No.

25 Q. Do you have any personal knowledge

1 of what devices belonging to Ms. DeMarco or
2 accessible by Ms. DeMarco were reviewed?

3 A. No.

4 Q. So I would have to ask Ms. DeMarco
5 to know the answer to that question?

6 A. Other than I had seen, you know,
7 obviously her e-mails in the production.

8 Q. With respect to your personal
9 information, were any other platforms reviewed
10 other than what you have told us so far today?

11 A. I'm not sure. I don't understand
12 the question.

13 Q. Let me ask you, do you know if any
14 of your text messages were reviewed?

15 A. I don't believe so.

16 Q. Do you know -- do you use any social
17 media communication apps like What's App or
18 Slack?

19 MR. WALSH: Objection to form.

20 A. No.

21 BY MR. KOH:

22 Q. Besides being a licensed attorney,
23 do you hold any other professional licenses?

24 A. No.

25 Q. What is your current job title with

1 McDonald's?

2 A. Senior counsel in the asset
3 management legal group.

4 Q. What is the asset management legal
5 group?

6 A. It is the team, the legal team that
7 supports the asset management function of the
8 U.S. real estate business.

9 Q. So what are the assets that are
10 within the jurisdiction of the asset management
11 legal group?

12 A. Properties that McDonald's leases
13 from a third party in the United States. And
14 then there's some exclusions.

15 Q. What are the exclusions?

16 A. Special venues, like shopping malls,
17 airports, military bases. A few others that I'm
18 not recalling.

19 Q. You mentioned properties that were
20 leased by McDonald's. Does the asset management
21 group legal team also have jurisdiction over any
22 properties that are owned by McDonald's?

23 A. We do not.

24 Q. Is that under the jurisdiction of a
25 separate group?

1 A. We don't really call it
2 jurisdiction, but --

3 Q. How about responsibility, is that a
4 better word?

5 A. Yes, sure. The property management
6 legal team handles matters related to owned
7 properties and other -- they have other
8 responsibilities, as well.

9 Q. So how long have you been senior
10 counsel in McDonald's asset management legal
11 team?

12 A. Approximately seven years.

13 Q. Have you ever held any other
14 positions at McDonald's?

15 A. I held the position of counsel for
16 the first year at McDonald's.

17 Q. Was that counsel in any specific
18 unit, like the asset management legal team, or
19 was it just general?

20 A. Same unit. Same team.

21 Q. Okay.

22 So you went from counsel to senior
23 counsel?

24 A. Correct.

25 Q. And that happened about seven years

1 ago?

2 A. Correct.

3 Q. Besides counsel and senior counsel,
4 did you have any other employment with
5 McDonald's?

6 A. I have some other responsibilities
7 related to the senior counsel and counsel
8 role -- well, senior counsel roles having to do
9 with sustainability initiatives.

10 Q. Well, let's talk about what your
11 responsibilities are as senior counsel at
12 McDonald's; and specifically, what are your
13 responsibilities as part of the asset management
14 legal team?

15 A. I support the asset managers in
16 certain geographic areas of the U.S.

17 Q. Which areas are those?

18 A. It is -- the U.S. is divided up into
19 field offices, and the two field offices I cover
20 are the Stamford field office and a portion of
21 the Bethesda field office.

22 So I generally say that I cover from
23 Philadelphia to Maine on the eastern coast.

24 Q. Stamford, Connecticut; Bethesda,
25 Maryland?

1 A. Correct.

2 Q. The Bethesda field office really
3 doesn't go south of Philadelphia, is that what
4 you're telling me?

5 A. No, I only handle the portion of
6 Bethesda field office restaurants there in
7 Pennsylvania, Delaware and New Jersey that are
8 part of the Bethesda field office, and another
9 attorney covers the other states that are
10 included in the Bethesda field office.

11 Q. Okay.

12 And when you say you support the
13 asset managers, can you describe what that
14 entails?

15 A. The asset managers are real estate
16 professionals who work for McDonald's that have
17 a portfolio of leased restaurants that they
18 manage, whether it be extending leases,
19 purchasing lease sites, otherwise renegotiating
20 leases.

21 There's a number of
22 responsibilities, but those are, I think, the
23 primary ones.

24 Q. Other than what you have described,
25 do you have any other responsibilities as senior

1 counsel in McDonald's asset management legal
2 team currently?

3 A. I manage, I manage six paralegals.

4 Q. Anything else?

5 A. Occasional special projects,
6 et cetera, with the team.

7 Q. What are your responsibilities, if
8 any, that are outside the asset management legal
9 team at McDonald's?

10 A. I support the global impact team in
11 relation to climate action matters, packaging,
12 recycling, water, waste.

13 And then I manage a pro bono
14 project, Bankruptcy Center of Excellence for the
15 U.S., for the U.S. legal team.

16 Those are the main ones. I'm sure
17 there's other things that come up.

18 Q. Can you describe your familiarity
19 with the real estate market in Brooklyn, New
20 York?

21 MR. WALSH: Objection to form.

22 MR. KOH: Well, let me ask a
23 different question then.

24 BY MR. KOH:

25 Q. How familiar are you with the real

1 estate market in Brooklyn, New York?

2 MR. WALSH: Same objection.

3 BY MR. KOH:

4 Q. Go ahead and answer that question,
5 please.

6 A. Not very familiar.

7 Q. So, what you described in your job
8 responsibilities so far, would it be accurate to
9 say it comprises of providing legal advice?

10 A. Yes.

11 Q. Do your job responsibilities include
12 anything other than providing legal advice?

13 A. Not that I can think of.

14 Q. Do you ever provide general business
15 advice to anybody at McDonald's?

16 MR. WALSH: Objection to form.

17 BY MR. KOH:

18 Q. You can answer. Let me ask the
19 question.

20 Do you understand what I mean by
21 general business advice?

22 A. Not really.

23 Q. Okay.

24 Have you ever discussed business
25 subjects with anyone at McDonald's?

1 MR. WALSH: Objection to form.

2 BY MR. KOH:

3 Q. You can answer that question.

4 A. Can you repeat the question?

5 Q. Do you ever discuss business
6 subjects with anyone at McDonald's?

7 A. Yes, as a part of providing legal
8 advice.

9 Q. Do you ever negotiate business terms
10 on behalf of McDonald's?

11 A. No.

12 MR. WALSH: Object to the form.

13 MR. KOH: Nat, can you bring up
14 what we have marked as Exhibit 2 and
15 designate that as Defendant's Exhibit B,
16 please.

17 (McDonald's Corporation
18 Privilege Log was marked as
19 Defendant's Exhibit B for
20 identification, as of this date.)

21 BY MR. KOH:

22 Q. Mr. Meyer, I've placed before you
23 what we have marked for identification as
24 Defendant's Exhibit B.

25 Do you recognize this document?

1 A. I'm just scrolling through here.

2 Yes.

3 Q. Tell us what it is.

4 A. It is McDonald's corporate privilege
5 log dated May 17, 2021.

6 Q. Did you have any role in the
7 preparation of Defendant's Exhibit B?

8 A. No.

9 Q. Do you know who prepared it?

10 A. Our counsel, Pashman Stein.

11 Q. Do you have any knowledge as to how
12 it was determined what documents would appear on
13 Defendant's Exhibit B, the privilege log?

14 MR. WALSH: I just want to just
15 pose an objection to the extent that
16 this calls for Mr. Meyer to reveal any
17 privileged information and caution him
18 not to reveal any privileged information
19 in the course of responding to this
20 answer.

21 MR. KOH: Okay.

22 Well, let's slow this down and
23 take it one at a time so we don't break
24 the privilege here.

25

1 BY MR. KOH:

2 Q. Please answer the next question as
3 yes or no. Do you have any knowledge as to how
4 the documents which were listed on the privilege
5 log were determined to be privileged?

6 You can answer that yes or no.

7 A. Yes.

8 Q. Yes, okay.

9 And how did you obtain that
10 knowledge?

11 MR. WALSH: Once again, I'll
12 object to the extent that it calls for
13 privileged information.

14 BY MR. KOH:

15 Q. Did you obtain that knowledge
16 through any other means than discussing with
17 McDonald's counsel?

18 A. No.

19 Q. Did you have any input - again,
20 please answer this yes or no - in determining
21 what documents would be listed as privileged?

22 MR. WALSH: Once again, I'm going
23 to object. You're asking Mr. Meyer to
24 reveal privileged or potentially asking
25 him to reveal potentially privileged

1 information.

2 I'll advise Mr. Meyer to the
3 extent that in responding to this
4 question it requires disclosure of
5 privileged information, not to reveal
6 that information.

7 MR. KOH: Okay.

8 I'll ask the question again.

9 BY MR. KOH:

10 Q. Did you have any input in
11 determining which documents listed on the
12 privilege log would be designated as privileged?

13 A. There was discussions with counsel,
14 but I don't want to say anything more.

15 Q. Okay. Fair enough.

16 MR. KOH: Let's bring up what we
17 have designated, Nat, in the file as
18 No. 3, and mark that as Defendant's
19 Exhibit C.

20 (Ground Lease for 840
21 Atlantic Avenue site was marked as
22 Defendant's Exhibit C for
23 identification, as of this date.)

24 BY MR. KOH:

25 Q. I have placed before you what we

1 have marked for identification as Defendant's
2 Exhibit C.

3 Do you recognize that?

4 A. I'm trying to scroll here. I can
5 only see the first page.

6 Okay, here we go. Got it.

7 This is the ground lease for the 840
8 Atlantic restaurant site.

9 Q. When for the first time did you see
10 the ground lease?

11 A. I don't recall.

12 Q. Was it within the last three years
13 or earlier than that?

14 A. I certainly saw it in 2018, but I
15 don't recall if there was a prior -- if I had
16 seen it prior to that.

17 Q. Am I correct that you had no
18 involvement in the negotiation and drafting of
19 Defendant's Exhibit C?

20 A. You are correct.

21 Q. Do you know who on behalf of
22 McDonald's was involved in the negotiation and
23 drafting of Defendant's Exhibit C?

24 A. I do not.

25 Q. If you needed to find that -- excuse

1 me. Let me rephrase that.

2 If you needed to learn that
3 information, where would you look or what would
4 you do?

5 A. I would have to -- I think we would
6 have to -- or I would have to talk with various
7 people in the legal department and on the
8 business side to see who was responsible for
9 this area of the country at the time it was
10 negotiated.

11 Q. And who would those people be?

12 A. I'm not even sure, you know, who
13 would be or if there are people that would know.

14 MR. KOH: Let's bring up what we
15 have marked as Exhibit 4 and mark that
16 as Defendant's Exhibit D for
17 identification.

18 (Option Rent Addendum was
19 marked as Defendant's Exhibit D for
20 identification, as of this date.)

21 BY MR. KOH:

22 Q. Mr. Meyer, do you recognize
23 Defendant's Exhibit D?

24 A. Yes.

25 Q. Tell us what it is, please.

1 A. It is the option rent addendum that
2 is attached to the ground lease that we just
3 talked about.

4 Q. I would like you to turn to the
5 second page of that document.

6 Do you have it in front of you, sir?

7 A. Yes.

8 Q. Can you tell us -- I would like you
9 to look at the second paragraph on that page,
10 which begins "The rental value."

11 Do you see that paragraph?

12 A. Yes.

13 Q. Can you tell us what that paragraph
14 means to you?

15 MR. WALSH: Objection to form.

16 BY MR. KOH:

17 Q. You may answer.

18 A. It is describing how the rental
19 value shall be established for the option
20 periods which this option rent addendum or the
21 option period for which it is talking about.

22 Q. Okay.

23 Would it be fair to say that the
24 rental value based on this paragraph should
25 reflect the highest -- let me rephrase that.

1 Would it be fair to say that the
2 fair market rental value based on this paragraph
3 would reflect property's highest and best use?

4 MR. WALSH: Objection to form and
5 also object insofar as it is calling for
6 a legal conclusion.

7 MR. KOH: Yes.

8 BY MR. KOH:

9 Q. You may answer.

10 A. Can you repeat the question?

11 MR. KOH: Please read it back.

12 (Record read.)

13 A. I mean, just reading the paragraph,
14 knowing all the uses to which the property can
15 be put without duress on either party.

16 So it doesn't say highest and best
17 use and, you know, this isn't the, I guess, end
18 of the story in terms of the meaning of the
19 paragraph.

20 BY MR. KOH:

21 Q. Well, what do you think the end of
22 the story is in terms of the meaning of the
23 paragraph?

24 MR. WALSH: Objection to form.

25

1 BY MR. KOH:

2 Q. You can answer that question.

3 A. I was just referencing, you know,
4 that there are -- there is case law and, you
5 know, appraiser interpretation, you know, based
6 on appraisal standards as to exactly what this
7 means.

8 Q. What case law are you referring to?

9 MR. WALSH: Objection to form.

10 A. Well, I don't have a -- I don't know
11 the universe of case law. You know, one
12 particular case that is relevant is -- I believe
13 it is the Second Avenue case.

14 BY MR. KOH:

15 Q. Any other cases that you remember?

16 MR. WALSH: Objection to form.

17 A. Not off the top of my head.

18 BY MR. KOH:

19 Q. If you needed to refresh your
20 recollection as to any other case law, what
21 would you do?

22 MR. WALSH: Objection to form.

23 I'll just -- I just want to put on the
24 record that this witness is being
25 presented as a 30(b)(6) witness and not

1 as a legal expert.

2 But if you can answer, you can
3 try to go ahead without revealing any
4 privileged information.

5 A. Can you repeat the question?

6 MR. KOH: Please read it back.

7 (Record read.)

8 A. The first thing I would do is
9 discuss with counsel.

10 BY MR. KOH:

11 Q. Anything else?

12 A. No.

13 Q. Okay.

14 You also mentioned appraisal
15 standards. To what appraisal standards were you
16 referring?

17 MR. WALSH: Objection to the
18 form.

19 A. USPAP standards. I'm not an expert
20 in them, but that's the standard that comes to
21 mind.

22 BY MR. KOH:

23 Q. Besides counsel, who have you
24 discussed Exhibit D with?

25 MR. WALSH: Objection to form.

1 And also, I just want to remind
2 the witness not to reveal any privileged
3 information in your answer.

4 BY MR. KOH:

5 Q. Yes or no, have you discussed
6 Exhibit D with Carol DeMarco?

7 A. Yes.

8 Q. How often?

9 MR. WALSH: Objection to form.

10 A. I don't know how often.

11 BY MR. KOH:

12 Q. What have you discussed about
13 Exhibit D with Ms. DeMarco?

14 MR. WALSH: Objection to form.

15 And also, just I again want to
16 caution the witness, who is a lawyer at
17 McDonald's Corporation and provides
18 advice to Ms. DeMarco, as he previously
19 testified.

20 And so, I would caution the
21 witness not to reveal any privileged
22 information during the course of your
23 response.

24 And I'm not sure -- you know, if
25 you cannot answer the question without

1 revealing privileged information, then I
2 advise you not to answer it.

3 BY MR. KOH:

4 Q. Can you answer the question,
5 Mr. Meyer?

6 A. Can you repeat the question?

7 MR. KOH: Please read it back,
8 and answer the question bearing in mind
9 Mr. Walsh's instruction.

10 (Record read.)

11 A. That would be privileged
12 information.

13 BY MR. KOH:

14 Q. I assume you know who Sharon
15 Locatell is?

16 A. Yes.

17 Q. She is the appraiser that McDonald's
18 hired to perform an appraisal as part of the
19 process outlined in the option rent addendum,
20 correct?

21 A. Correct.

22 Q. Have you discussed the option rent
23 addendum with Ms. Locatell?

24 A. I believe so.

25 Q. Tell me what you discussed with her.

1 A. I don't recall specific discussions.
2 I mean, I do recall that as part of her
3 retention, we sent the option rent addendum, you
4 know, so that she was aware that when the
5 formal -- when and if the formal process was
6 initiated, that she would be valuing the
7 property in accordance with the option rent
8 addendum.

9 Q. You said you didn't recall
10 specifically what you discussed with
11 Ms. Locatell.

12 Can you think of anything that would
13 refresh your recollection concerning your
14 discussions with Ms. Locatell?

15 A. I mean, if there were documents that
16 might, but nothing else.

17 Q. Did you make any notes when you had
18 discussions with Ms. Locatell?

19 A. I don't believe so.

20 Q. Is that consistent with your usual
21 practice, not to make notes of discussions with
22 appraisers that McDonald's hires?

23 MR. WALSH: Objection to form.

24 BY MR. KOH:

25 Q. You can answer that question.

1 A. It depends.

2 Q. What does it depend on?

3 A. You know, what's the subject matter,
4 who I'm talking to. Lots of things. I don't
5 have notes.

6 Q. Is there any --

7 MR. WALSH: Objection.

8 Mr. Meyer was in the middle of
9 finishing --

10 MR. KOH: I apologize.

11 A. Go ahead.

12 BY MR. KOH:

13 Q. Is there any reason why you chose
14 not to make notes of your conversation with
15 Ms. Locatell?

16 MR. WALSH: Objection to form.

17 A. I don't recall.

18 BY MR. KOH:

19 Q. We were looking at this first or the
20 second full paragraph on the second page of
21 Exhibit D.

22 Do you recall whether or not you
23 discussed that paragraph with Ms. Locatell?

24 A. I don't recall discussing that
25 paragraph with Ms. Locatell.

1 Q. Let's look at the paragraph below
2 that. Read it to yourself, please, and let me
3 know when you're finished.

4 It begins "The standard market
5 data."

6 A. Okay.

7 Q. Do you have an understanding of what
8 the standard market data approach technique is
9 as referred to in this paragraph?

10 A. Generally.

11 Q. Tell us what it is, please, what
12 your understanding is.

13 A. It should just be the standard
14 appraisal approach that an appraiser would use
15 to value vacant land. You know, I don't know
16 beyond what it says here.

17 Q. Have you ever heard the term
18 comparable or comps in connection with an
19 appraisal?

20 A. Yes.

21 Q. What does that mean to you?

22 A. It means, it means comparable.

23 Q. Comparable what?

24 A. It depends, the context. In this
25 context, comparable leases.

1 Q. Did you discuss this paragraph that
2 begins "The standard market data approach" on
3 Exhibit D with Ms. Locatell?

4 A. Yes.

5 Q. What do you remember discussing with
6 Ms. Locatell?

7 A. That the valuation technique
8 requires her to use comparable leases to value
9 the property or the fair market rental value of
10 the property.

11 Q. What if there are no comparable
12 leases available?

13 A. There were comparable leases
14 available.

15 Q. That wasn't my question.

16 What does the agreement, to your
17 understanding, say about what to do if there
18 aren't comparable leases available?

19 MR. WALSH: Objection to form
20 insofar as the document speaks for
21 itself.

22 BY MR. KOH:

23 Q. You can go ahead and answer.

24 A. It says if adequate comparable
25 leases are not available, then a land residual

1 technique as defined by American Institute of
2 Real Estate Appraisers shall be used.

3 Q. Do you know what a land residual
4 technique is?

5 A. Generally.

6 Q. Tell us what your understanding is.
7 I understand that you're not an appraiser, but
8 what is your understanding as a lawyer?

9 A. I believe it requires a calculation
10 of different costs in order to sort of build out
11 a value.

12 Q. Anything else?

13 A. And it would also include building
14 out sort of the rental income.

15 Q. And when you say building out, do
16 you mean physically building out or something
17 else?

18 A. No, I mean researching and then
19 applying that to a formula.

20 Q. Building out an economic model,
21 would that be an appropriate way to describe it?

22 MR. WALSH: Objection to form.

23 A. Yes, I believe so.

24 MR. KOH: Did you get the answer?

25 (Record read.)

1 BY MR. KOH:

2 Q. A few moments ago you testified that
3 there were comparable leases available.

4 Do you remember that?

5 A. I do.

6 Q. How do you know that?

7 A. Because Ms. Locatell included
8 comparable leases in her appraisal report.

9 Q. Did you make any -- did McDonald's
10 make any independent evaluation to determine if
11 the leases included in the appraisal report, in
12 fact, were comparable?

13 A. No.

14 Q. So is it accurate to say that
15 McDonald's came to the determination that
16 comparable leases were available was based
17 solely on the advice of Ms. Locatell?

18 MR. WALSH: Object to form.

19 A. Based on her professional judgment
20 and appraisal. Her letter of opinion of value
21 report, to be more specific.

22 BY MR. KOH:

23 Q. Do you know if McDonald's made any
24 effort to determine if any comparable leases
25 were available with respect to the property at

1 840 Atlantic Avenue?

2 MR. WALSH: Objection to form.

3 BY MR. KOH:

4 Q. You can answer.

5 A. McDonald's provided Ms. Locatell
6 with potentially comparable leases from broker
7 contacts, from McDonald's own leases. We sent a
8 number to her for her to decide whether those
9 were comparable.

10 Q. Why did McDonald's do that?

11 MR. WALSH: Objection to form.

12 A. McDonald's did that because leases
13 are not a matter of public record and we wanted
14 to give Sharon the most information that we
15 could for her to make -- you know, to do her
16 valuation.

17 BY MR. KOH:

18 Q. How did McDonald's determine which
19 leases they would send to Ms. Locatell?

20 A. With respect to the leases that we
21 obtained or lease information that we obtained
22 from brokerage firms, we didn't make a
23 determination. We just sent her what we
24 received.

25 With respect to McDonald's leases,

1 we looked at, for ground leases, free-standing
2 restaurants in the boroughs.

3 I believe Sharon gave us --
4 Ms. Locatell gave us some parameters. And
5 again, just provided leases that fit that
6 category, those categories.

7 Q. Turn to the first page of Exhibit D.
8 Please take a look at the last paragraph on that
9 page and then the first paragraph on the bottom
10 of page 2 of Exhibit D.

11 And let me know when you're ready to
12 have some questions on those paragraphs.

13 A. Okay.

14 Q. Is it accurate to say that the
15 appraiser appointed by McDonald's and the
16 appraiser appointed by Vanderbilt, Ms. Locatell
17 and Mr. Tener, respectively, could not agree on
18 the fair market value by differing by not more
19 than 15 percent or by more than 15 percent?

20 Let me rephrase that question. It
21 came out horrible garble, and I apologize.

22 Is it accurate to say that
23 McDonald's appraiser, Ms. Locatell, and
24 Vanderbilt's appraiser, Mr. Tener, could not
25 agree on the fair market value of the property

1 as contemplated in the option rent addendum,
2 Exhibit D?

3 A. That's accurate.

4 Q. And is it accurate to say that they
5 differed by more than 15 percent?

6 MR. WALSH: Objection to form.

7 A. Yes.

8 BY MR. KOH:

9 Q. So is it accurate to say that under
10 the agreement when that happened, each party or
11 each party's appraiser attempts to work together
12 to appoint a third appraiser; is that correct?

13 MR. WALSH: Objection to form and
14 also object insofar as it calls for a
15 legal conclusion and insofar as it also
16 assumes facts not in the record.

17 MR. KOH: Let me rephrase the
18 question.

19 BY MR. KOH:

20 Q. Did there come a time when the party
21 appraisers attempted to agree on a third
22 appraiser as provided by Exhibit D?

23 A. Yes.

24 Q. And when was that time?

25 A. I believe it was May of 2019.

1 Q. And was a third appraiser ever
2 agreed upon?

3 A. Yes.

4 MR. WALSH: Objection to form;
5 also as far as it calls for a legal
6 conclusion.

7 And I'll also just remind
8 Mr. Meyer to just give me a second or
9 two to lodge any objection before you
10 answer so we're not speaking over each
11 other.

12 BY MR. KOH:

13 Q. Who was that third appraiser?

14 A. Marc Nakleh. I'm not sure how to
15 pronounce his last name.

16 Q. Do you know how to spell it?

17 A. N-a-k-l-e-h.

18 Q. I believe you're correct.

19 Let's take a look at paragraph D
20 which begins "If one of the parties."

21 Do you see that?

22 A. Yes.

23 Q. And it says "If one of the parties
24 fails to choose an appraiser within the
25 specified time period or fails to cooperate in

1 any way so that the process described above
2 cannot be completed prior to 120 days of the
3 expiration of the primary term of this lease,
4 the FMV of the one appraiser chosen by the
5 cooperating party shall be used to determine the
6 rent during the extension periods."

7 Do you see that?

8 A. Yes.

9 Q. Did one of the parties not
10 cooperate?

11 A. Yes.

12 Q. And which party was that?

13 A. Vanderbilt.

14 Q. Was an appraiser able to be chosen
15 within the 120-day period?

16 MR. WALSH: Objection to form and
17 also insofar as it calls for a legal
18 conclusion.

19 MR. KOH: I will rephrase the
20 question.

21 BY MR. KOH:

22 Q. Did any party to the option term
23 rent agreement, Exhibit D, fail to choose an
24 appraiser within the specified time period?

25 MR. WALSH: Same objection.

1 You can answer, if you can.

2 A. As I said before, the part -- the
3 appraisers agreed upon a third appraiser.

4 BY MR. KOH:

5 Q. And did they do so timely under the
6 agreement, to your knowledge?

7 MR. WALSH: Objection to the form
8 and also insofar as it calls for a legal
9 conclusion.

10 BY MR. KOH:

11 Q. Does McDonald's contend that
12 Vanderbilt failed to timely appoint any
13 appraiser?

14 A. McDonald's contends that we did
15 not -- or that -- that Vanderbilt did not timely
16 appoint an appraiser in that we were never able
17 to enter into an engagement agreement with a
18 third appraiser because there was a disagreement
19 about the process by which the third appraiser
20 would do their job under the option rent
21 addendum.

22 Q. Does McDonald's contend that
23 Vanderbilt failed to cooperate so that the
24 process described in the option rent addendum,
25 Exhibit D, could not be completed prior to 120

1 days of the expiration of the primary term of
2 the lease?

3 A. Yes.

4 Q. And how does McDonald's believe that
5 Vanderbilt failed to cooperate?

6 MR. WALSH: Objection to form.

7 All this information is already in the
8 pleadings.

9 But, Mr. Meyer, you can try to
10 answer, if you can.

11 BY MR. KOH:

12 Q. Please answer the question. We can
13 have it read back if you would like to do that.

14 A. Please.

15 MR. KOH: Please read the
16 question back.

17 (Record read.)

18 A. No. 1 would be what I just described
19 in that Vanderbilt refused to allow the third
20 appraiser, and the landlord and tenant selected
21 appraisers to complete the formal process as
22 described in the option rent addendum.

23 And then, No. 2, Vanderbilt
24 submitted an appraisal that was not in
25 compliance with the lease.

1 BY MR. KOH:

2 Q. Describe how Vanderbilt refused to
3 allow the third appraiser and the landlord- and
4 tenant-selected appraisers to complete the
5 formal process as described in the option rent
6 addendum.

7 MR. WALSH: Objection to form.

8 You can answer, if you can.

9 A. Vanderbilt insisted on a process by
10 which they -- three appraisers all submit letter
11 opinions of value without discussion or an
12 ability to come to a consensus or a majority
13 opinion.

14 BY MR. KOH:

15 Q. And McDonald's believes that process
16 wasn't allowed under the option rent term
17 addendum?

18 A. Can you rephrase the question?

19 Q. Sure.

20 Am I correct that McDonald's
21 believes that the option rent addendum does not
22 permit a process where all three appraisers
23 submit letter opinions of values without any
24 discussion or ability to come to a consensus or
25 a majority opinion?

1 MR. WALSH: Objection.

2 MR. KOH: I'm not finished. I'm
3 sorry. Let me start again and rephrase.

4 BY MR. KOH:

5 Q. Am I correct that McDonald's
6 believes that the option rent addendum does not
7 permit a process where all three appraisers
8 submit individual letter opinions of values
9 without any discussion or ability to come to a
10 consensus or a majority opinion?

11 Am I correct about that?

12 A. Yes, that's correct.

13 Q. Okay.

14 And is there anything specifically
15 in the option rent addendum that McDonald's is
16 relying upon for that conclusion?

17 MR. WALSH: Objection to form.

18 All this information, as I said
19 before, is in the pleadings.

20 But, Mr. Meyer, you can attempt
21 to answer, if you can.

22 A. Yes.

23 BY MR. KOH:

24 Q. And what specific portion of the
25 option rent addendum is McDonald's relying on?

1 MR. WALSH: Same objection.

2 A. On page 1, the last paragraph, the
3 last three sentences.

4 BY MR. KOH:

5 Q. Anything else?

6 MR. WALSH: Objection to form and
7 also insofar as you're asking this
8 witness to provide a legal opinion.

9 MR. KOH: I stand by the
10 question.

11 A. Sorry, what was the question?

12 BY MR. KOH:

13 Q. The question was other than what you
14 have just described, is there anything else
15 you're relying on for the conclusion that the
16 option rent addendum does not permit the three
17 appraisers to submit individual letter opinions
18 of value without discussion?

19 MR. WALSH: Same objection. Same
20 objection. I'm sorry.

21 A. Those are, I believe, the relevant
22 language from the option rent addendum.

23 BY MR. KOH:

24 Q. Are you aware, Mr. Meyer, that
25 McDonald's has agreed to allow the three

1 appraisers to discuss their letter opinions of
2 value as part of the process set forth in the
3 option rent addendum?

4 MR. WALSH: Objection to form.

5 A. I don't understand the question.

6 BY MR. KOH:

7 Q. Are you aware that at some point
8 during this litigation, Vanderbilt agreed to
9 allow the three appraisers to discuss their
10 letter opinions of value and attempt to come to
11 a consensus?

12 MR. WALSH: Objection to form.

13 A. Allow during this litigation? I
14 just don't understand the question.

15 MR. KOH: All right. I will
16 withdraw the question.

17 Bear with me one moment. I want
18 to check a transcript reference.

19 BY MR. KOH:

20 Q. You testified earlier that
21 Vanderbilt submitted an appraisal that was not
22 in compliance with the lease. Explain how so.

23 MR. WALSH: Objection to form and
24 also insofar as it calls for a legal
25 conclusion.

1 But Mr. Meyer can answer, to the
2 extent he can.

3 BY MR. KOH:

4 Q. Go ahead, Mr. Meyer.

5 A. The first appraisal that landlord
6 submitted used a land sales comparison approach
7 which is not permitted under the lease.

8 Q. Was there another appraisal that was
9 submitted that corrected that?

10 MR. WALSH: Objection to form and
11 also insofar as it calls for a legal
12 conclusion.

13 BY MR. KOH:

14 Q. You mentioned the first appraisal
15 that Vanderbilt submitted. How many appraisals
16 did Vanderbilt submit?

17 A. I believe two.

18 Q. Okay.

19 When were those submitted?

20 A. The first was submitted
21 approximately June or July of 2019. The second
22 was submitted in approximately September,
23 October of 2019, but dated July 2019.

24 Q. Was the appraisal submitted in June
25 or July of 2019 in writing or was that a

1 discussion?

2 MR. WALSH: Objection to form.

3 I'm not sure what everyone is talking
4 about with the term submitted.

5 MR. KOH: I think that was the
6 word that your client used. That's why
7 I chose it.

8 So since he understands what he
9 meant, because I think most people
10 understand what they mean when they say
11 something, I would like him to answer
12 the question.

13 A. Maybe the better term is issued.
14 Tom Tener issued a letter opinion of value.

15 Like I said, I don't remember the
16 exact date, but I think it was in June or July
17 of 2019.

18 BY MR. KOH:

19 Q. And then there was a subsequent
20 letter opinion of value?

21 A. There was a second letter opinion of
22 value that was sent by, I believe -- I believe
23 by Morris Missry later in, like I said,
24 September, October.

25 Q. What, if anything, was the

1 difference between the two letter opinions of
2 value that Vanderbilt submitted?

3 A. The value was the same. I believe
4 the methodology was purportedly different.

5 Q. Explain how the methodology was
6 purportedly different.

7 MR. WALSH: I'm just going to
8 object insofar as the documents speak
9 for themselves.

10 But to the extent Mr. Meyer
11 recalls and can answer, he can answer.

12 MR. KOH: I understand.

13 BY MR. KOH:

14 Q. Explain how the methodology was
15 purportedly different.

16 A. I believe the first appraisal, like
17 I said, was based on a land sales comparison
18 approach, and I believe the second appraisal was
19 based on both a land sales comparison report and
20 some type of land residual technique.

21 Q. You said the methodology was
22 purportedly different. Why did you say
23 purportedly?

24 A. I'm not an expert in appraisal
25 methodology or technique, but I understood that

1 from -- I believe from Morris Missry, that Tom
2 Tener had used a different technique.

3 Q. So once the second letter opinion of
4 value was submitted, why couldn't the appraisal
5 process move forward?

6 MR. WALSH: Objection to form.

7 A. Because we believed that appraisal
8 was done in bad faith and not compliant with the
9 lease.

10 BY MR. KOH:

11 Q. Why does McDonald's believe that the
12 second letter opinion of value was done in bad
13 faith and not in compliance with the lease?

14 MR. WALSH: Objection to form
15 and --

16 MR. KOH: Mr. Walsh, can I ask
17 you to confine your objections to form,
18 so just say objection to form.

19 MR. WALSH: That's exactly what I
20 just said.

21 MR. KOH: Yes, but I've noticed
22 that a number of your objections you
23 have also explained what the problem was
24 with the form. If I need that
25 explanation, I'll ask you.

1 MR. WALSH: Okay.

2 And I'll make my objections as I
3 see fit.

4 MR. KOH: Understood.

5 A. Can you repeat the question?

6 MR. KOH: Please read back the
7 question, Catherine.

8 (Record read.)

9 A. First, the lease requires that the
10 valuation be done based on comparable leases and
11 that report was not.

12 And then secondly, the second
13 appraisal report again purported to take into
14 account the encumbrance of the 20-year lease but
15 somehow ended up with the same value as the
16 report that did not incorporate the encumbrance
17 of the 20-year lease.

18 BY MR. KOH:

19 Q. Other than what you have just
20 testified to, does McDonald's have any other
21 reason to believe that the second appraisal was
22 done in bad faith and not in compliance with the
23 lease?

24 MR. WALSH: Objection to form.

25 Also, in so far as it calls for a legal

1 conclusion.

2 A. The fact that the appraisal or the
3 letter opinion of value was dated July 30th and
4 Vanderbilt's agreement that the encumbrance of
5 the lease need be -- you had included as part of
6 the valuation didn't occur until months or a
7 month or so or more later than that.

8 BY MR. KOH:

9 Q. Any other reasons that McDonald's
10 believes that the second opinion, letter opinion
11 of value from Vanderbilt was done in bad faith
12 and not in compliance with the lease?

13 MR. WALSH: Same objections.

14 A. Off the top of my head, no. But we
15 would have laid them out in our pleadings were
16 there others.

17 BY MR. KOH:

18 Q. When did McDonald's first learn that
19 Vanderbilt had acquired the ground lease
20 position at 840 Atlantic Avenue?

21 A. I believe in late 2018.

22 Q. And how did it learn that?

23 A. I believe it was as a result of
24 Sharon Locatell's firm doing research on the
25 site as part of their valuation.

1 Q. You said it was late 2018. Could
2 you possibly have meant late 2017, if you
3 recall?

4 A. It's possible.

5 Q. Okay.

6 And when for the first time -- I'm
7 sorry, withdraw that question.

8 When for the first time did
9 McDonald's begin to evaluate the fair market
10 value of the lease premise at 840 Atlantic
11 Avenue?

12 MR. WALSH: Objection to form.

13 BY MR. KOH:

14 Q. You can go ahead and answer that, if
15 you know.

16 A. McDonald's didn't evaluate the
17 valuation or the value of the property. We
18 engaged Sharon Locatell, I believe, in early
19 2018 to do so.

20 Q. Okay.

21 Prior to engaging Sharon Locatell,
22 did McDonald's take any steps to determine what
23 the fair market value of the lease for 840
24 Atlantic Avenue was?

25 MR. WALSH: Objection to form.

1 A. I don't, I don't recall.

2 MR. KOH: Okay.

3 Let's bring up what's designated
4 in my stack, Nat, as Exhibit No. 5 and
5 mark it as Defendant's Exhibit E.

6 (Document bearing Bates
7 stamp MCD006445 through 006447 was
8 marked as Defendant's Exhibit E for
9 identification, as of this date.)

10 BY MR. KOH:

11 Q. I have placed before you what has
12 been marked as Defendant's Exhibit E.

13 Can you tell us what this is?

14 A. Let me look at it here.

15 MR. WALSH: If I can just jump in
16 for a moment. I see this document is
17 stamped with the "Confidential - Subject
18 to Protective Order."

19 I don't have the protective order
20 right in front of me, but I just request
21 that the parties comply with the
22 protective order insofar as depositions
23 are concerned.

24 MR. KOH: Would you like to
25 designate this portion of the deposition

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3 MR. KOH: All right.

4 We have been going about 90
5 minutes and that's usually as much as a
6 lot of people can take.

7 I suggest we take a 10-minute
8 break, and we can return at 20 minutes
9 to noon, or I guess 20 to 11 Illinois
10 time.

11 THE WITNESS: Okay.

12 MR. KOH: All right.

13 Thank you.

14 Off the record.

15 (Whereupon, at 11:30 o'clock
16 a.m., a recess was taken until 11:40
17 o'clock a.m.)

18 MR. KOH: Back on the record.

19 Nat, please put up what's marked
20 as 6 and mark that as Defendant's
21 Exhibit F.

22 (Document bearing Bates
23 stamp MCD006375 through 006376 was
24 marked as Defendant's Exhibit F for
25 identification, as of this date.)

1 BY MR. KOH:

2 Q. Mr. Meyer, have you seen Defendant's
3 Exhibit F before?

4 A. I'm copied, but I don't recall the
5 e-mail.

6 Q. Okay.
7 Who is Jared Jones?

8 A. He is an employee of Bohler
9 Engineering which is an engineering firm that we
10 work with.

11 Q. And this Exhibit F also refers to
12 Mindy Monsees. Who is that?

13 A. She was -- I believe her title was
14 coordinator. She worked in the Stamford field
15 office I think as a contractor.

16 Q. Was Bohler ever engaged by
17 McDonald's to prepare a zoning analysis for the
18 site at 840 Atlantic Avenue?

19 A. I don't recall one.

20 Q. Was any kind of zoning analysis ever
21 prepared at McDonald's request for 840 Atlantic
22 Avenue?

23 MR. WALSH: Objection to form.

24 MR. KOH: Let me rephrase that.

25

1 BY MR. KOH:

2 Q. Did McDonald's receive any kind of
3 zoning analysis for the property at 840 Atlantic
4 Avenue from any of its contractors?

5 MR. WALSH: Objection to form.

6 BY MR. KOH:

7 Q. You can answer.

8 A. It's possible.

9 Q. That means it might have been, but
10 you don't know?

11 A. I don't know.

12 Q. Why was McDonald's seeking a zoning
13 analysis for the property at 840 Atlantic
14 Avenue?

15 A. It could be for any number of
16 reasons. I don't know why Carol was asking for
17 one in this e-mail, but there could be lots of
18 reasons.

19 Q. Such as?

20 A. In conjunction with a major remodel
21 project would be one.

22 Q. Anything else?

23 MR. WALSH: Objection to form.

24 A. I don't know.

25

1 BY MR. KOH:

2 Q. Could McDonald's have used a zoning
3 analysis in connection with the fair market
4 value rent appraisal provided for in the option
5 rent addendum?

6 MR. WALSH: Objection to form.

7 A. Possibly. Like I said, I don't
8 remember one.

9 MR. KOH: Please bring up
10 Exhibit 7 and mark that as Defendant's
11 Exhibit G, please.

12 (Document bearing Bates
13 stamp MCD006371 through 006375 was
14 marked as Defendant's Exhibit G for
15 identification, as of this date.)

16 BY MR. KOH:

17 Q. Have you seen Exhibit G before?

18 A. Yes.

19 Q. Tell us what it is.

20 A. It is a letter from Vanderbilt
21 Atlantic Holdings LLC stating the estimate of
22 the fair market value of the demised premises.

23 Q. I notice that no one from McDonald's
24 countersigned it. I assume, not correct, that
25 it was never countersigned?

1 A. I don't recall.

2 Q. Okay.

3 In the Exhibit G in the second
4 paragraph, Vanderbilt writes that "Landlord has
5 determined that the fair market value of the
6 demised premises is \$975,000".

7 Did McDonald's agree with that?

8 A. No.

9 Q. And what was the basis for the
10 disagreement?

11 MR. WALSH: Objection to form.

12 BY MR. KOH:

13 Q. Let me ask it more simply. Why did
14 McDonald's disagree?

15 A. Based on analysis that Ms. Locatell
16 had conducted.

17 Q. What was that? I'm sorry, were you
18 finished?

19 A. Yes.

20 Q. Okay.

21 What was the analysis that
22 Ms. Locatell had conducted?

23 A. She had done some initial valuation
24 work.

25 Q. Describe it, please.

1 A. I mean, I don't know how to describe
2 it beyond that. She provided --

3 Q. Go ahead and finish your answer.

4 A. She provided initial information
5 about her -- how she valued the property, and it
6 was less than the amount in the letter.

7 Q. And was this initial information in
8 written form?

9 A. I don't recall the dates.

10 Q. Did McDonald's engage any outside
11 contractors to help Ms. DeMarco -- I'm sorry,
12 Ms. Locatell, come up with this conclusion that
13 \$975,000 was not the fair market rental value?

14 MR. WALSH: Objection to form.

15 BY MR. KOH:

16 Q. You can answer.

17 A. Not that I recall.

18 Q. Do you recall if McDonald's provided
19 any information to Ms. Locatell to assist
20 Ms. Locatell in evaluating whether \$975,000 was
21 an accurate estimate of the fair market value --
22 fair market rental value of the demised
23 premises?

24 A. Again, I don't remember the timing
25 exactly. We did provide potential comparable

1 leases to her. It may have been after this,
2 though. I don't remember the date.

3 Q. Who specifically at McDonald's made
4 the decision not to countersign Exhibit G and
5 accept Vanderbilt's proposed fair market value
6 of \$975,000?

7 A. I don't recall if there was a formal
8 process or who decided.

9 Q. Well, did you decide?

10 A. No.

11 Q. And you don't recall who did?

12 A. I don't.

13 Q. Who was involved in the decision to
14 reject the \$957,000 fair market value estimate
15 that Vanderbilt provided?

16 A. Carol DeMarco. Potentially Dave
17 Kearns.

18 Q. Anyone else?

19 A. Not that I recall.

20 Q. Who is David Kearns?

21 A. He's Carol's boss.

22 Q. What is his title at McDonald's?

23 A. I believe portfolio director.

24 Q. What are Ms. DeMarco's
25 responsibilities --

1 MR. WALSH: Objection to form.

2 BY MR. KOH:

3 Q. -- at McDonald's?

4 A. She is an asset manager. And as I
5 described previously, she is responsible for
6 leased McDonald's sites in the Stamford -- in a
7 portion of the Stamford field office territory.

8 Q. And David Kearns is the portfolio
9 director at McDonald's. What are his
10 responsibilities?

11 MR. WALSH: Objection to form.

12 A. He manages the asset managers. So
13 technically there's around 10 asset managers
14 around the country, and he manages that team.

15 He may have other responsibilities,
16 as well. I believe that's the primary
17 responsibility.

18 BY MR. KOH:

19 Q. You said there were 10 asset
20 managers throughout the country. Am I correct
21 that Ms. DeMarco was one of those 10 asset
22 managers?

23 A. Yes.

24 Q. How did McDonald's determine to
25 select Sharon Locatell as its appraiser as part

1 of the FMV process described in the option term
2 rent addendum?

3 MR. WALSH: Objection to form.

4 A. Ms. Locatell has worked with
5 McDonald's for a number of years in valuing real
6 estate in the New York City area.

7 BY MR. KOH:

8 Q. How many assignments, to your
9 knowledge, has Ms. Locatell completed for
10 McDonald's?

11 MR. WALSH: Objection to form.

12 A. I don't know the number.

13 BY MR. KOH:

14 Q. Is it more than five?

15 A. I believe so.

16 Q. Is it more than 10?

17 A. Like I said, I don't know the
18 number.

19 Q. Is it more than 50?

20 MR. WALSH: Objection to form.

21 He said he doesn't know the number.

22 MR. KOH: I know he doesn't know
23 the exact number. That's what he
24 testified to. I'm trying to get a sense
25 of a range. The question is proper.

1 BY MR. KOH:

2 Q. Is it more than 50?

3 A. I don't know.

4 Q. Who made the decision to hire
5 Ms. Locatell for this particular assignment in
6 connection with 840 Atlantic Avenue?

7 A. Carol.

8 Q. Do you know if McDonald's considered
9 any other appraisers before they selected
10 Ms. Locatell for this assignment at 840 Atlantic
11 Avenue?

12 A. I don't believe so.

13 Q. What do you recall McDonald's doing
14 after it received Exhibit G --

15 MR. WALSH: Objection to form.

16 BY MR. KOH:

17 Q. -- in terms of the property at 840
18 Atlantic Avenue?

19 MR. WALSH: Same objection.

20 A. I recall thereafter, and I believe
21 before, there were discussions between Carol and
22 Sam Rottenberg about attempting to negotiate
23 fair market rental value.

24 BY MR. KOH:

25 Q. Do you recall McDonald's doing

1 anything else in connection with the property at
2 840 Atlantic Avenue?

3 MR. WALSH: Objection to form.

4 A. No, I don't remember McDonald's
5 doing anything else.

6 BY MR. KOH:

7 Q. I would like you to --

8 MR. KOH: Well, let's bring up
9 what's No. 8 in the stack, please, and
10 we'll mark that as Exhibit H.

11 (Document bearing Bates
12 stamp MCD000294 through 000306 was
13 marked as Defendant's Exhibit H for
14 identification, as of this date.)

15 BY MR. KOH:

16 Q. Mr. Meyer, have you seen Exhibit H
17 before?

18 A. Hold on, I'm taking a look here.

19 Q. Okay.

20 A. Yes, I have seen this before.

21 Q. And what is it?

22 A. It is a letter from Sharon Locatell
23 to McDonald's valuing the 840 Atlantic Avenue
24 property.

25 Q. Did you view this letter on or about

1 December 12th as the letter is dated?

2 A. I don't recall.

3 Q. There's some handwriting on the
4 first page. It says, I believe, "Delivered
5 vacant/redevelopment site."

6 Whose handwriting is that?

7 A. I don't know.

8 Q. Turn to page 9 of this document
9 bearing Bates Stamp No. 302.

10 A. Okay.

11 Q. Am I correct that Ms. Locatell
12 valued the land at 840 Atlantic Avenue at
13 \$9,900,000?

14 MR. WALSH: Objection to form.

15 A. It says "It is our opinion that the
16 value of those subject sites is currently
17 estimated at \$9,900,000".

18 BY MR. KOH:

19 Q. And then Ms. Locatell writes
20 "Appropriate ground rent rates range from 4
21 percent to 6 percent".

22 Do you see that?

23 A. Yes.

24 Q. So is it accurate to say that
25 Ms. Locatell concludes that applying those

1 factors at a hundred percent the rent range is
2 from 396,000 to \$594,000, correct?

3 MR. WALSH: Objection to form.

4 A. Yes, this is -- I think this is
5 the -- these are -- I know there was more than
6 one initial valuation that she did prior to the
7 formal process to assist in, you know, the
8 negotiation process between Carol and Sam.

9 BY MR. KOH:

10 Q. Was it to assist -- was it for any
11 other purpose other than to assist in the formal
12 negotiation process between Carol and Sam?

13 MR. WALSH: Objection to form.

14 A. I mean, she was giving her initial
15 valuation of the property, but it was -- that's
16 what was going on with this transaction at the
17 time.

18 BY MR. KOH:

19 Q. Am I correct that in Exhibit H,
20 Ms. Locatell used a sales comparison approach to
21 value the property?

22 MR. WALSH: Objection to form.

23 A. Yes, that's correct.

24 BY MR. KOH:

25 Q. Is the use of the sales comparison

1 approach something that McDonald's asked
2 Ms. Locatell to do?

3 A. I don't know if we asked her -- I
4 know she did multiple valuation reports at this
5 time based on different methodologies.

6 MR. KOH: Let's bring up the next
7 document, which is No. 9 in the stack,
8 and mark it as Defendant's Exhibit I.

9 (Document bearing Bates
10 stamp MCD000343 through 000350 was
11 marked as Defendant's Exhibit I for
12 identification, as of this date.)

13 BY MR. KOH:

14 Q. Do you have that in front of you?

15 A. I do.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. So what is Defendant's Exhibit I?

19 A. It is another one of the initial
20 valuations Ms. Locatell did at this time.

21 Q. There's handwriting on the first
22 page that appears to me to read "Net Lease
23 Comps."

24 Do you know whose handwriting that
25 is?

1 A. I don't.

2 Q. Both Exhibits H and I are addressed
3 specifically to you. Did you personally request
4 these evaluations?

5 A. I did not.

6 Q. Do you know who did?

7 A. I don't.

8 Q. What appraisal methodology is used
9 in Defendant's Exhibit I?

10 MR. WALSH: Objection to form.

11 A. It appears to be a comparable lease
12 methodology.

13 BY MR. KOH:

14 Q. And am I correct to conclude that
15 under that methodology, Ms. Locatell concludes
16 that the fair market rental value - and this is
17 on page 5 of the document, Bates stamped 347, is
18 300,800?

19 MR. WALSH: Objection to form.

20 A. Yes, it says "We estimate a ground
21 lease value at \$80 a square foot of gross
22 building area or fair market value of
23 approximately 300,000".

24 BY MR. KOH:

25 Q. Turn to page 3 of Defendant's

1 Exhibit I.

2 A. Okay.

3 Q. In the last paragraph on that page,
4 the second sentence reads "Just three somewhat
5 comparable leases were uncovered."

6 Do you recall seeing that sentence
7 before?

8 A. I don't recall specifically.

9 Q. Do you recall any discussions with
10 Ms. Locatell in or around December or November
11 of 2018 concerning finding comparable leases for
12 the property at 840 Atlantic Avenue?

13 A. I don't remember any specific
14 discussions.

15 Q. Why did McDonald's choose to have
16 valuation for this property compared both under
17 the sales or rental comparison approach and
18 under the land sale value approach?

19 A. This was in the negotiation period,
20 so it would be typical for us to look at the
21 valuation in a number of different ways in order
22 to, you know, to talk apples to apples with the
23 landlord.

24 So Carol just had, you know, the
25 largest amount of information when she was

1 talking to Mr. Rottenberg about the valuation or
2 about an agreed-upon fair market rental value.

3 MR. KOH: Please bring up what we
4 have marked as No. 10 in the stack, and
5 we'll mark that as Exhibit J.

6 (Document bearing Bates
7 stamp MCD006026 through 006028 was
8 marked as Defendant's Exhibit J for
9 identification, as of this date.)

10 BY MR. KOH:

11 Q. Have you seen any part of Exhibit J
12 before?

13 A. Give me a minute.

14 Q. Sure.

15 A. Okay.

16 Q. Do you know what Exhibit J is?

17 A. Yes.

18 Q. Tell us what it is, please.

19 A. It is an e-mail chain between Carol
20 DeMarco and other McDonald's folks regarding the
21 exercise of the 840 Atlantic Avenue lease
22 option.

23 MR. WALSH: And, Mr. Meyer, are
24 you done with your answer?

25 THE WITNESS: Yes.

1 MR. WALSH: I just would like to
2 designate this portion of the deposition
3 as confidential, as well.

4 I see that this is also marked as
5 Confidential, Subject to Protective
6 Order.

7 MR. KOH: That's fine. I assumed
8 we hadn't come out, frankly. But if we
9 haven't, we'll stay in. If we did come
10 out at some point, we're back in.

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17 MR. KOH: Now let's bring up the
18 document in the stack that's numbered
19 11, please, and we'll mark that as
20 Exhibit K.

21 (Document bearing Bates
22 stamp MCD006633 through 006636 was
23 marked as Defendant's Exhibit K for
24 identification, as of this date.)

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1 MR. KOH: Now, please let's bring
2 up Exhibit 12 and mark that as
3 Exhibit L.

4 (Document bearing Bates
5 stamp MCD006023 through 006025 was
6 marked as Defendant's Exhibit L for
7 identification, as of this date.)

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19 MR. KOH: All right.

20 Let's bring up what's marked as
21 No. 13, please, and let's mark that as
22 Defendant's Exhibit M.

23 (Document bearing Bates
24 stamp MCD006325 through 006331 was
25 marked as Defendant's Exhibit M for

1 identification, as of this date.)

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1 MR. KOH: All right.

2 Let's bring up what has been
3 marked as No. 14, and mark it as
4 Defendant's Exhibit N as in Nancy.

5 (Document bearing Bates
6 stamp MCD007200 through 007248 was
7 marked as Defendant's Exhibit N for
8 identification, as of this date.)

9 MR. WALSH: Howard, how long --
10 I'm not trying to nail you down to a
11 specific time. We have been going for
12 about an hour and 20 minutes.

13 How long do you expect to talk
14 about this document? I'm wondering if
15 we should take a break now.

16 MR. KOH: I was going to try to
17 work my way through this document, but
18 if everybody feels now is a good time to
19 break, we can do that and we can come
20 back at the end of lunch.

21 I want to defer -- the most
22 important person in this room is
23 actually our court reporter, and the
24 second most important is Mr. Meyer.

25 So if they want to break, that's

1 what we're going to do. And I'm happy
2 to do that now. You know, it is about,
3 you know, 1:00 o'clock here. We started
4 at 10, so it has been three hours.

5 I can go another half hour or we
6 can stop now. It is up to you, unless
7 either Mr. Meyer or Ms. Donahue overrule
8 me.

9 MR. WALSH: Whatever Mr. Meyer
10 and the court reporter would like to do.
11 Now seems like a decent time, but I'm
12 flexible.

13 MR. KOH: I'm happy to stop now
14 if that's what you want to do, Brendan.
15 We'll adjourn for a half hour and we'll
16 come back at 1:30, and I think that's
17 great.

18 Off the record.

19 (Whereupon, at 1:00 o'clock
20 p.m., a recess was taken until 1:30
21 o'clock p.m.)
22
23
24
25

1 A F T E R N O O N S E S S I O N

2 1:30 o'clock p.m.

3 MR. KOH: Back on the record.

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REC

9 MR. KOH: Let's bring up what's
10 been marked -- stacked as No. 15, and
11 mark it as Exhibit O as in ostrich.

12 (Document bearing Bates
13 stamp MCD00888 through 000889 was
14 marked as Defendant's Exhibit O for
15 identification, as of this date.)

16 BY MR. KOH:

17 Q. Have you seen Exhibit O before?

18 A. Yes.

19 Q. And that's a letter that you signed
20 and sent to Tom Li at Vanderbilt?

21 A. That's correct.

22 Q. And why did you send this letter?

23 A. Pursuant to the option rent
24 addendum, it is required that once it is clear
25 that the parties are unable to agree upon the

1 fair market value of the demised premises, a
2 letter or notification needs to be sent in order
3 to initiate the formal three-appraiser process.

4 Q. How did it become clear that the
5 parties were unable to reach an agreement?

6 A. After multiple conversations between
7 Carol and Sam Rottenberg, the parties were very
8 far apart on what the rental amount should be.

9 Q. Did you participate in any of these
10 conversations that you just described?

11 A. I don't believe I ever was on the
12 phone with Carol and Sam.

13 Q. Did Carol tell you what happened
14 during these telephone calls between her and Sam
15 Rottenberg?

16 A. Not blow-by-blow, but certain
17 discussions.

18 Q. And what did she tell you?

19 A. One thing I recall is that Sam had
20 asked what McDonald's was going to do if the
21 rent was higher than they were willing to pay.

22 And otherwise, just never a, you
23 know, a real discussion about, you know, numbers
24 in terms of where they could compromise.

25 Q. Why did McDonald's choose to send

1 out this letter on April 15th as opposed to an
2 earlier date or a later date?

3 A. I don't recall specifically. It may
4 happen -- it may have to do with the timeframe
5 set forth in the option rent addendum.

6 Q. Did it have anything to do with when
7 the extended term of George Michell's operator's
8 lease began, which was April 8, 2019?

9 A. Not to my knowledge.

10 Q. Okay.

11 MR. KOH: Let's bring up what has
12 been marked as No. 16, please, and mark
13 it as Exhibit P as in Peter.

14 (Document bearing Bates
15 stamp MCD003003 was marked as
16 Defendant's Exhibit P for
17 identification, as of this date.)

18 BY MR. KOH:

19 Q. Have you seen Exhibit 16 before,
20 Mr. Meyer -- I'm sorry, Exhibit P?

21 A. I wasn't copied, but I have seen it.

22 Q. Okay.

23 This is an e-mail from Sharon
24 Locatell to Ms. DeMarco and Ellen Benjamin.

25 Do you see that?

1 A. Yes.

2 Q. And just for the record, can you
3 tell us who Ellen Benjamin is?

4 A. She works for Sharon's appraisal
5 firm, Appraisers and Planners.

6 Q. And Ms. Locatell writes "Hi Carol, I
7 spoke with Tom Tener."

8 You understand Tom Tener was
9 Vanderbilt's appraiser, right?

10 A. Yes.

11 Q. And she writes, "His side is pushing
12 for us to select the third appraiser. I told
13 him I'm not ready, that I need to do work and
14 will circle back to him the first full week of
15 May."

16 Do you see that?

17 A. That's what it says.

18 Q. Yes.

19 Do you understand why Ms. Locatell
20 wouldn't have been ready to select the third
21 appraiser?

22 MR. WALSH: Objection to the
23 form.

24 A. I don't know specifically why she
25 wasn't ready, but the option rent addendum

1 provides for timeframes by which these things
2 need to happen, and I don't believe that time
3 period had expired or was -- there was still
4 time under the option rent addendum.

5 And I believe in addition to
6 selecting the third appraiser, there would have
7 been additional work Sharon would have needed to
8 do.

9 So she's saying she's not ready and
10 she has additional work to do.

11 BY MR. KOH:

12 Q. Do you recall discussing with
13 Ms. Locatell why she wasn't ready?

14 A. Not specifically to this e-mail or
15 time period. I mean, she's busy. That would be
16 my assumption.

17 Q. The letter also says -- I'm sorry,
18 the e-mail which we have marked as Exhibit P
19 also says "In the meantime, Ellen will continue
20 to work on collecting new data."

21 Do you have any understanding of
22 what that data was?

23 MR. WALSH: Objection to the
24 form.

25 A. I don't. I don't know what she's

1 referencing.

2 BY MR. KOH:

3 Q. Did you ever discuss with
4 Appraisers and Planners the need to collect new
5 data or about the time McDonald's invoked the
6 third appraiser process?

7 MR. WALSH: Objection to the form
8 insofar as it assumes facts not in the
9 record.

10 MR. KOH: All right.

11 I'll correct that.

12 BY MR. KOH:

13 Q. Do you ever recall discussing with
14 Sharon Locatell in or about April of 2019
15 collecting new data?

16 A. No, other than we were -- she and we
17 were collecting potentially comparable ground
18 leases since, as I said before, that those
19 aren't a public record. So it was -- that was
20 ongoing.

21 Q. If Ms. Locatell had already provided
22 two appraisal reports to McDonald's, why was
23 additional data needed?

24 MR. WALSH: Objection to the
25 form.

1 A. Because there's always leases being
2 signed. You know, there's always a use for
3 additional data.

4 MR. KOH: Let's bring up what has
5 been put in the stack as No. 17, and
6 mark it as Exhibit Q, please.

7 (Document bearing Bates
8 stamp MCD002897 and 002898 was
9 marked as Defendant's Exhibit Q for
10 identification, as of this date.)

11 BY MR. KOH:

12 Q. Have you seen Exhibit Q before?

13 A. I was not copied on it, but I have
14 seen it.

15 Q. In this e-mail, again from
16 Ms. Locatell to Ms. DeMarco, Ms. Locatell
17 writes, "Hi Carol, Tom Tener has reached out and
18 wants us to pick the third appraiser."

19 Do you see that?

20 A. Yes.

21 Q. So this is the second time that
22 Vanderbilt's appraiser wanted to pick the third
23 appraiser, correct?

24 MR. WALSH: Objection to the
25 form.

1 A. I mean, based on the previous
2 exhibit, I don't know if this is additional
3 reach-out or if -- I don't know if this -- you
4 know, how she came about that information.

5 BY MR. KOH:

6 Q. Then in the next paragraph,
7 Ms. Locatell writes, "Ellen has been working on
8 rezoning scenarios and has spoken with a land
9 use attorney for some general guidance."

10 Do you see that?

11 A. I do.

12 Q. Did McDonald's ask Appraisers and
13 Planners to work on rezoning scenarios?

14 A. Not that I know of.

15 Q. Did McDonald's ask Appraisers and
16 Planners to speak with a land use attorney?

17 A. I don't believe so.

18 Q. Do you have any understanding as to
19 why Appraisers and Planners was working on
20 rezoning scenarios?

21 MR. WALSH: Objection to form.

22 A. I mean, I'm assuming it is part of
23 their appraisal valuation process.

24 BY MR. KOH:

25 Q. At any time, did you discuss

1 rezoning scenarios with any representatives from
2 Appraisers and Planners?

3 A. I mean, I generally recall some
4 discussions about it in that I think from Tom
5 and Sharon's discussions, that rezoning was part
6 of Tom's valuation.

7 And then I -- again, I don't
8 remember the specifics of those discussions, but
9 ultimately we decided it wasn't necessary.

10 Q. When you say we decided it wasn't
11 necessary, who did you mean by "we"?

12 A. McDonald's and Appraisers and
13 Planners.

14 Q. Why did you decide it wasn't
15 necessary?

16 A. We reviewed the case law and
17 determined that the valuation was to be done,
18 including all encumbrances of the lease and
19 current zoning.

20 Q. Do you know if Mr. Tener agreed with
21 that conclusion?

22 A. I don't know what he believed. I
23 know what his appraisal reports indicated.

24 Q. What do you remember discussing with
25 Ms. Locatell concerning a land use attorney in

1 connection with this fair market appraisal
2 process?

3 A. I recall she recommended a number of
4 land use attorneys that she had worked with
5 before. And again, we ultimately decided we
6 didn't -- there was no need to engage a land use
7 attorney.

8 Q. And again, that was a decision that
9 both McDonald's and Appraisers and Planners
10 made?

11 A. Yes.

12 MR. KOH: All right.

13 Let's bring up the next document
14 which is No. 18, and mark it as
15 Exhibit R.

16 (Document bearing Bates
17 stamp MCD002952 through 002954 was
18 marked as Defendant's Exhibit R for
19 identification, as of this date.)

20 BY MR. KOH:

21 Q. Have you seen Exhibit R before?

22 A. I'm taking a look here. Yes, I've
23 seen it.

24 Q. What is it?

25 A. It is an e-mail chain between

1 Sharon, Carol and Ellen.

2 Q. And in the e-mail dated May 6, 2019
3 at 2:57, Ms. Benjamin writes "Carol, Sharon is
4 asking for recent net leases signed by
5 McDonald's. I told her you were going to get us
6 information on the following," and then there's
7 a list of places, including North Babylon,
8 Valley Stream, Bruckner Boulevard and Oakdale.

9 And then Ms. DeMarco responds to
10 that e-mail a little bit later that day. "Hi
11 Ellen and Sharon, I need to discuss internally
12 for approval. I thought that would help for
13 20th Avenue."

14 What does 20th Avenue refer to, if
15 you know?

16 A. I believe it is referring to another
17 restaurant location.

18 Q. So this was another appraisal
19 assignment that Appraisers and Planners was
20 working on for McDonald's?

21 MR. WALSH: Objection to the
22 form.

23 BY MR. KOH:

24 Q. Was this another appraisal
25 assignment that Appraisers and Planners was

1 working on for McDonald's?

2 MR. WALSH: Object to the form.

3 A. I believe so.

4 BY MR. KOH:

5 Q. And then Ms. DeMarco writes, "As we
6 discussed, McD," which I assume is McDonald's,
7 "doesn't typically use their deals as comps."

8 Was that some kind of policy at
9 McDonald's?

10 A. It is sort of an informal policy.

11 Q. And what's their rationale behind
12 that informal policy?

13 A. McDonald's leases are not a matter
14 of public record. So we don't like to make them
15 public or share them to the extent we don't need
16 to.

17 Q. So is that why Ms. DeMarco needed
18 internal approval?

19 A. That's what she says here.

20 Q. Then Ms. DeMarco writes, "If there
21 is no other good data, I will advise."

22 Does that mean that there could be
23 exceptions to the policy about using McDonald's
24 own leases as comps?

25 MR. WALSH: Objection to form.

1 BY MR. KOH:

2 Q. Well, what do you understand the
3 sentence "If there is no other good data" and
4 then the second sentence to mean?

5 A. I understand this e-mail to mean
6 that she is going to ask and will advise what
7 she finds out.

8 MR. KOH: All right.

9 Let's please bring up No. 19, and
10 mark it as Defendant's Exhibit S.

11 (Document bearing Bates
12 stamp MCD007579 through 007582 was
13 marked as Defendant's Exhibit S for
14 identification, as of this date.)

15 BY MR. KOH:

16 Q. Have you seen Defendant's Exhibit S
17 before, Mr. Meyer?

18 A. Let me scroll through.

19 Q. Sure.

20 A. This is an e-mail chain between
21 Morris Missry and I.

22 Q. And who did you understand Morris
23 Missry to be in connection with the property at
24 840 Atlantic Avenue?

25 A. Counsel for Vanderbilt.

1 Q. And what were you discussing in this
2 e-mail chain?

3 A. It starts with me attempting to set
4 up a call in order to discuss and come to an
5 agreement on the appraisal process for the fair
6 market value lease option.

7 Q. And why was there a need to come to
8 an agreement for the appraisal process? Was
9 that not laid out in the option rent term
10 addendum?

11 MR. WALSH: Objection to form.

12 MR. KOH: I will withdraw and
13 rephrase.

14 BY MR. KOH:

15 Q. Why was there a need to come to an
16 agreement on the fair market value process?

17 MR. WALSH: Same objection.

18 A. Because there was a disagreement.

19 BY MR. KOH:

20 Q. What was the nature of the
21 disagreement?

22 A. The nature of the disagreement was
23 that the option rent addendum sets forth how the
24 formal process is supposed to work, and Morris
25 Missry on behalf of Vanderbilt believed that

1 that process involved each appraiser doing a
2 letter opinion of value and then the three being
3 averaged.

4 Q. Was it the three being averaged or
5 only the three being averaged if the third
6 appraiser didn't agree with one of the party
7 appraisers?

8 A. Well, Mr. Missry believed that the
9 three parties would never have the opportunity
10 to discuss and agree.

11 So unless two appraisers came to --
12 independently came to the same value to the cent
13 without any discussion, then the appraisals or
14 the letter of opinions of value would need to be
15 averaged.

16 Q. And Mr. Missry writes in the first
17 e-mail dated May 15th, "Mike, please let me know
18 when you're going to get back to me. I read the
19 provision again and I don't see where the three
20 appraisers would issue one letter opinion of
21 value."

22 Did you discuss that specific issue
23 with Mr. Missry?

24 A. I'm not sure what he means there.
25 It to me is a mischaracterization of our reading

1 of the lease.

2 Q. Do you believe that it was a
3 mischaracterization that Mr. Missry made in bad
4 faith?

5 A. I don't -- I have no idea.

6 Q. At the time that Exhibit S was
7 prepared, May 15, 2019, had the parties
8 exchanged -- let me rephrase that -- had the
9 party appraisers presented their opinions of
10 fair market value to each other?

11 A. I don't believe so.

12 MR. KOH: Let's bring up what's
13 marked in the stack as No. 20, and mark
14 that as Exhibit T.

15 (Document bearing Bates
16 stamp MCD006513 was marked as
17 Defendant's Exhibit T for
18 identification, as of this date.)

19 BY MR. KOH:

20 Q. Are you familiar with Exhibit T,
21 Mr. Meyer?

22 A. Let me read through it.

23 Q. Sure.

24 A. Yes, I was copied on it.

25 Q. And this is an e-mail that

1 Ms. DeMarco sent to Mr. Kearns, correct?

2 A. Correct.

3 Q. And Mr. Kearns was the portfolio
4 director. Is that what his title was?

5 A. I believe so.

6 Q. And it refers to a discussion about
7 the site at 840 Atlantic Avenue, correct?

8 MR. WALSH: Objection to form.

9 A. I don't know if it refers to a
10 discussion. It is looking to schedule a call
11 for a discussion.

12 BY MR. KOH:

13 Q. Yes.

14 Do you know if that call was ever
15 scheduled?

16 A. I don't remember.

17 Q. Okay.

18 Do you remember if at any time
19 Ms. DeMarco discussed background and status of
20 the issues at 840 Atlantic Avenue with
21 Mr. Kearns?

22 A. I recall being on at least one call
23 with Dave Kearns and Carol on this topic.

24 Q. And what -- I'm sorry, what did
25 Carol DeMarco say to Dave Kearns during that

1 call?

2 MR. WALSH: I'm just going to
3 object insofar as it calls for
4 privileged information.

5 You can answer insofar as you can
6 without revealing the nature of any
7 potential privileged discussions that
8 were had on that call.

9 But any non-privileged
10 information, I have no objection to.

11 MR. KOH: Right. I assumed that
12 non-privileged information included
13 background and status as distinct from
14 legal advice. And that's why I asked
15 what Ms. DeMarco said to Mr. Kearns
16 about 840 Atlantic Avenue.

17 BY MR. KOH:

18 Q. So to the extent you can answer that
19 question - I don't believe it calls for
20 privileged information and it is not my intent
21 to learn privileged information - please answer
22 the question.

23 MR. WALSH: Again, I just don't
24 necessarily disagree, but it is possible
25 that Ms. DeMarco could have shared her

1 understanding in the nature of her
2 communications based upon discussions
3 that she had with Mike.

4 I just caution the witness not to
5 reveal any privileged information, but
6 please answer fully with respect to any
7 non-privileged information that was
8 discussed on that call.

9 A. I don't recall specifically what
10 background and status information Carol gave to
11 Dave on that call. I was participating in order
12 to provide legal advice to the two of them.

13 BY MR. KOH:

14 Q. What was Mr. Kearns' role with
15 respect to the issue of the appraiser and rent
16 to be paid at 840 Atlantic Avenue?

17 MR. WALSH: Objection to the
18 form.

19 MR. KOH: I'm sorry?

20 MR. WALSH: I objected to the
21 form.

22 A. He is Carol's boss, so he was
23 assisting with decision-making, approvals,
24 et cetera.

25

1 BY MR. KOH:

2 Q. What sort of decisions was
3 Mr. Kearns assisting with?

4 MR. WALSH: Objection to the
5 form.

6 And again, I would caution the
7 witness not to reveal the nature of any
8 privileged discussions.

9 BY MR. KOH:

10 Q. To the extent you can answer without
11 revealing the nature of privileged discussions,
12 I think you can, please do so.

13 MR. WALSH: Objection.

14 A. Can you repeat the question?

15 MR. KOH: Please read the
16 question back.

17 MR. WALSH: And I object to you
18 telling the witness that you think he
19 can answer without revealing privileged
20 information. That is up to the witness
21 to decide.

22 MR. KOH: I think it is actually
23 up to the judge to decide ultimately.

24 But go ahead and answer the
25 question to the best of your ability.

1 (Record read.)

2 A. I guess I don't understand the
3 question. Just decisions on how to, you know --
4 on next steps, et cetera.

5 BY MR. KOH:

6 Q. All right.

7 In an earlier answer, you told me
8 that Mr. Kearns was Ms. DeMarco's boss, so he
9 was assisting with decision-making, approvals,
10 et cetera?

11 A. Yes.

12 Q. So what kind of decisions?

13 A. How McDonald's would proceed. I
14 don't remember any specific items for decision.

15 I mean, in addition to that, this
16 would have also been an update on what was going
17 on with the transaction.

18 Q. What transaction are you referring
19 to?

20 A. 840 Atlantic Avenue rent reset.

21 MR. KOH: All right.

22 Please bring up No. 21, and we'll
23 mark that as Exhibit U. I'm sorry,
24 that's a duplicate. Don't do that.

25 Ignore 21 and please bring up

1 No. 22, and mark that as Defendant's
2 Exhibit U.

3 (Document bearing Bates
4 stamp MCD001240 through 001253 was
5 marked as Defendant's Exhibit U for
6 identification, as of this date.)

7 BY MR. KOH:

8 Q. Do you recognize Defendant's
9 Exhibit U, Mr. Meyer?

10 A. I'm scrolling through. I don't
11 remember it specifically, but it looks like a
12 draft letter opinion of value from Sharon
13 Locatell.

14 Q. Do you see that it is signed on
15 page 10 and certification on page 11?

16 MR. WALSH: Object to the form
17 and characterization.

18 A. I do, but I also see some internal
19 notes that makes me think it is a draft.

20 BY MR. KOH:

21 Q. Specifically, what internal notes do
22 you see?

23 A. On page 18, Bates No. 1247, it says
24 "EB stopped here."

25 Q. Right.

1 Do you have any understanding of
2 what that means?

3 A. I don't.

4 Q. You say page 18. Did you mean to
5 say page 8?

6 A. Yes, Bates stamp 1247.

7 Q. Do you have any idea why
8 Ms. Locatell sent this to you?

9 A. I don't know that she did. I don't
10 know if she did or why.

11 Q. Do you recall reviewing this draft
12 on or about May 22, 2019?

13 A. I don't recall.

14 Q. Do you see on page 10 it uses the
15 \$9.9 million land value?

16 Do you see that?

17 A. I see that.

18 Q. Do you have any understanding of why
19 Ms. Locatell at this point was using the land --
20 withdraw that question. Let me ask another one
21 instead.

22 Do you have any idea why as of
23 May 2019 Ms. Locatell was evaluating 840
24 Atlantic Avenue using the sales comparison
25 approach?

1 MR. WALSH: Object to the form
2 and object insofar as it assumes facts
3 not in the record.

4 BY MR. KOH:

5 Q. You can answer.

6 A. I don't know why.

7 MR. KOH: All right.

8 Let's bring up what's marked as
9 No. 23, and we'll mark it as Exhibit V.
10 (Document bearing Bates
11 stamp MCD002908 through 002909 was
12 marked as Defendant's Exhibit V for
13 identification, as of this date.)

14 BY MR. KOH:

15 Q. Mr. Meyer, do you know what that is?

16 A. It is an e-mail chain between
17 Sharon, Carol and myself.

18 Q. All right.

19 And is there an attachment to that
20 e-mail, to your knowledge? Can you tell by
21 looking at the document?

22 A. In my e-mail dated May 28th at 8:52
23 a.m., I say "Please see the attached draft
24 engagement letter for the third appraiser."

25 So, yes.

1 Q. Okay.

2 MR. KOH: Let's bring up
3 Exhibit 40 in my stack, and let's mark
4 that as Exhibit V(a).

5 (Document bearing Bates
6 stamp MCD007924 through 007925 was
7 marked as Defendants' Exhibit V(a)
8 for identification, as of this
9 date.)

10 BY MR. KOH:

11 Q. Is this Exhibit V(a) the attachment
12 that's referred to in Exhibit V, Mr. Meyer?

13 MR. WALSH: I'm just going to
14 object here, Howard, because you
15 obviously have our document production.
16 You would know from the document
17 production what was actually attached
18 that you're asking Mr. Meyer about.

19 I don't think it is a fair
20 question to ask him more than two years
21 later what specific document was
22 attached. I think he said there was an
23 attachment to this e-mail, and you would
24 know what that e-mail -- what attachment
25 that was.

1 So I don't know if you can make a
2 representation about where this came
3 from.

4 MR. KOH: It is my understanding
5 that it was, but I wanted to find out if
6 there was any disagreement.

7 So that's what I can tell you,
8 but it isn't clear.

9 BY MR. KOH:

10 Q. Let's turn back to Exhibit V.

11 A. Exhibit V as in Victor?

12 Q. I'm sorry, Exhibit V as in Victor.

13 Ms. Locatell writes to you "I would
14 take out the reference to Prospect Heights
15 neighborhood."

16 Do you understand what that refers
17 to?

18 A. Not beyond -- apparently there was a
19 reference to the Prospect Heights neighborhood
20 that she wanted removed.

21 Q. Do you understand why Ms. Locatell
22 wanted it removed?

23 MR. WALSH: Object to the form.

24 A. No.

25

1 BY MR. KOH:

2 Q. And then Ms. Locatell writes "I
3 thought you were going to add language
4 highlighting the fact that the renewal option
5 calls for consideration of comparable leases to
6 determine the fair market rental value."

7 Do you see that?

8 A. Yes.

9 Q. Do you recall discussing that
10 subject with Ms. Locatell?

11 A. Not other than this e-mail.

12 Q. Okay.

13 And then it says "Highlighted it is
14 for a 5-year rental term".

15 Do you recall discussing that
16 subject with Ms. Locatell?

17 MR. WALSH: Object. That's not
18 actually what it says. It says for a
19 five-year renewal term.

20 MR. KOH: Yes, let me rephrase
21 that.

22 BY MR. KOH:

23 Q. Do you recall discussing with
24 Ms. Locatell to highlight it is for a five-year
25 renewal term?

1 MR. WALSH: Object to the form
2 and the characterization.

3 A. What's the question?

4 BY MR. KOH:

5 Q. The question is do you recall
6 discussing -- hold on.

7 The question is with respect to this
8 draft letter that's being discussed in
9 Exhibit V, do you recall any other discussions
10 with Ms. Locatell concerning the length of the
11 renewal term?

12 A. Not in addition to this, other than
13 this e-mail.

14 MR. KOH: Okay.

15 Let's bring up No. 25, and we'll
16 mark that as Exhibit W.

17 (Document bearing Bates
18 stamp MCD001697 through 001705 was
19 marked as Defendant's Exhibit W for
20 identification, as of this date.)

21 BY MR. KOH:

22 Q. Do you recognize what Exhibit W is?

23 A. I'm going through. It is a letter
24 of opinion value from Sharon Locatell.

25 Q. Did you receive it -- I'm sorry,

1 this wasn't sent to you. It was sent to
2 Ms. DeMarco.

3 Do you have any understanding of why
4 that is?

5 MR. WALSH: Object to the form
6 and the characterization.

7 A. What's the question?

8 BY MR. KOH:

9 Q. This letter is not addressed to you
10 as some of the other letter opinions of value
11 are. It is addressed only to Ms. DeMarco.

12 Do you have any understanding as to
13 why this was only addressed to Ms. DeMarco?

14 MR. WALSH: Object to the form.

15 MR. KOH: Okay.

16 BY MR. KOH:

17 Q. The date on the letter is June 17,
18 2019.

19 Do you see that?

20 A. Yes.

21 Q. Do you recall attending a meeting
22 with Ms. DeMarco and Mr. Rottenberg and
23 Mr. Missry on or about June 19th?

24 A. I do.

25 Q. Besides those people who I just

1 listed there, who else was, if anybody, was
2 present at this meeting?

3 A. Myself, Carol, Sharon, Tom Li, Tom
4 Tener, Sam and Morris Missry.

5 Q. What happened during this meeting?

6 MR. WALSH: Object to the form.

7 A. We discussed, primarily discussed --
8 well, we talked about a lot of things, but I
9 believe most of the discussion was around Tom
10 Tener's valuation.

11 BY MR. KOH:

12 Q. Okay.

13 Where was this meeting held?

14 A. Morris Missry's office in Manhattan.

15 Q. And what specifically do you
16 remember being discussed concerning Tom Tener's
17 valuation of the premise at 840 Atlantic Avenue?

18 A. Tom Tener walked us through his
19 approach to valuing the property and his
20 conclusions.

21 Q. And what do you remember Mr. Tener
22 saying about his approach?

23 A. That his conclusion was that the
24 fair market rental value was 1.3 million and
25 that the 80 percent fair market rental value was

1 over a million dollars; that he looked at land
2 sales to come up with that valuation and then
3 applied a rent -- or a cap rate to the land
4 value to come up with a value that the, that the
5 cap rate was based on.

6 I think he said 50 ground leases
7 that he had in his office. I mean, I'm sure
8 there was more, but those are the highlights
9 that I remember of his discussing his valuation.

10 Q. You used the term cap rate. This is
11 the second time in this deposition you have used
12 it.

13 Can you tell us what you understand
14 that to mean?

15 A. I certainly could be using it wrong,
16 but I am referring to a percentage that you
17 apply to the land value to come up with a rent.

18 So whether it be 4 percent or 10
19 percent, and that percentage, in my experience,
20 is related to the creditworthiness of the
21 tenant.

22 Q. How is it related to the
23 creditworthiness of the tenant?

24 A. That an owner or a purchaser of land
25 would be willing to accept a lower percentage or

1 a lower return if the tenant's creditworthiness
2 was higher or had a better credit rating or was
3 deemed more creditworthy than if a tenant had
4 lesser credit, and then an owner would demand a
5 higher return for the commensurate risk.

6 Q. What else do you remember being
7 discussed at this meeting besides Mr. Tener's
8 approaches and conclusions with respect to his
9 valuation of the premise at 840 Atlantic Avenue?

10 A. I recall bringing to Mr. Missry's
11 attention that the New York case law that
12 states, I'm paraphrasing, that unless the
13 formula for determining the value expressly
14 states that the value will be determined as
15 unencumbered by the lease, that the encumbrance
16 of the lease and the current zoning and current
17 condition of the property should be incorporated
18 as part of the valuation.

19 And Mr. Missry's response was that
20 he would look into that, you know.

21 And then there was significant
22 discussion between Sharon and Tom Tener about,
23 you know, their assumptions and comparable
24 ground leases, which I don't recall a lot of the
25 detail of that discussion.

1 Q. Is there anything else you can
2 remember being discussed at this meeting?

3 A. I know there was some continued
4 discussion about how the formal or the
5 three-appraiser process would work and just a
6 continued disagreement on that topic.

7 Q. Was anything discussed about using
8 the land residual during this meeting?

9 A. Yes, Sharon and Tom had -- as they
10 were kind of getting into the weeds of the
11 underlying assumptions, you know, I think they
12 felt that that might be in the spirit of
13 compromise, sort of setting aside what the lease
14 required; that that might be an avenue for them
15 to, you know -- again, I think I said this
16 before, but kind of compare apples to apples
17 since they were using two totally different
18 methodologies in their letter opinions of value.

19 And there was some discussion about
20 whether, you know, if we wanted to continue kind
21 of a compromise discussion, that that might be
22 an avenue to pursue.

23 Q. Did anybody take any notes during
24 this meeting?

25 MR. WALSH: Object to the form.

1 A. I don't, I don't -- I've seen some
2 notes in the document production.

3 BY MR. KOH:

4 Q. Do you recall seeing anybody at this
5 meeting taking notes?

6 A. I don't recall specifically.

7 Q. Did you meet with anybody prior to
8 this meeting to prepare for the meeting?

9 A. I met with Carol and met with
10 Sharon.

11 Q. Did you meet with Carol and Sharon
12 at the same time or separately?

13 A. I met with Carol separately and then
14 met with Carol and Sharon all together.

15 Q. About how many times did you meet
16 with Sharon or Carol and Sharon all together in
17 order to prepare for this meeting?

18 A. I believe I arrived a day before. I
19 could be getting this wrong. I don't remember
20 the timing. I mean, I arrived I think the day
21 before the meeting and met with Sharon at least
22 once.

23 Carol and I were together
24 separately. I think both days we did, I believe
25 we toured the site, but that could have been a

1 different -- I'm getting confused now.

2 I had several trips to New York, and
3 we looked at the actual -- looked at this
4 location and others, but I can't recall if we
5 looked at this location when I was there for the
6 meeting or separately.

7 Q. Okay.

8 Do you recall preparing for this
9 meeting by telephone or video conference with
10 anyone?

11 A. Definitely not video conference. I
12 don't recall a separate telephone preparation.

13 Q. Okay.

14 In the one meeting that we have
15 established -- at least one meeting that we
16 established that you had with Ms. DeMarco and
17 Ms. Locatell to prepare for the June 19th
18 meeting, describe what occurred during that
19 preparation meeting.

20 MR. WALSH: I'm sorry, did you
21 ask about this meeting with Ms. Locatell
22 or Ms. DeMarco?

23 MR. KOH: Well, apparently
24 Ms. DeMarco and Ms. Locatell were there.
25 That's my understanding.

1 BY MR. KOH:

2 Q. Is that correct, Mr. Meyer?

3 A. Yes, that's correct.

4 Q. Okay.

5 Describe what happened at that
6 meeting.

7 A. We, we being Carol and I, went to
8 Sharon's offices. I mean, mainly discussed --
9 it was just a continued discussion of additional
10 comps that could potentially be, you know,
11 additional sites or leases that could be
12 considered comparable sites, and Sharon was
13 compiling those into a large spreadsheet. So I
14 believe it included other sites.

15 And in addition to the comps that
16 she included in her letter opinion of value, I
17 think with the intention of, you know, if
18 Vanderbilt or Tom Tener didn't like the comps
19 that we included in the letter opinion of value,
20 that that might be an area for fruitful
21 compromise discussion about, you know, if you
22 don't like these comps, what about these other
23 sites that could be comparable.

24 It was really just trying to have as
25 much information as possible ahead of the

1 meeting so that, you know, to the extent there
2 was a topic that, again, would be fruitful for
3 trying to -- I mean, the point of the meeting
4 was to try to come to an agreement on the fair
5 market rental value.

6 So we wanted to have as much
7 information as possible, you know, to be ready
8 to have a discussion if we were able.

9 Q. Do you remember anything else that
10 occurred during this meeting in advance of the
11 June 19th meeting with Mr. Rottenberg,
12 Mr. Missry and others that occurred?

13 A. Nothing other than what I have
14 talked about so far.

15 Q. Were any documents exchanged during
16 the June 19th meeting which Ms. Locatell,
17 Mr. Rottenberg, Mr. Missry, you and Ms. DeMarco
18 and Mr. Li attended?

19 A. I'm not certain. I have a memory
20 of -- this is might be a better question for
21 Sharon, but I think we may have provided a list
22 of that spreadsheet of comps, but I'm not
23 certain.

24 Q. At this meeting, did McDonald's
25 agree to take any other steps after the meeting?

1 MR. WALSH: Object to the form.

2 A. I think there was two things.

3 Not that McDonald's would take
4 steps, but Sharon and Tom would continue the
5 discussion, you know, into the, you know, the
6 assumptions and to see if they could find common
7 ground.

8 There was a discussion with Morris
9 Missry, I believe, about putting together some
10 type of letter agreement that would allow
11 continued compromise discussions.

12 BY MR. KOH:

13 Q. Did you have any discussions after
14 the June 19th meeting with Ms. Locatell
15 concerning what occurred during the June 19th
16 meeting?

17 A. I don't -- I know there were some
18 e-mails exchanged, but I don't recall any
19 telephone calls.

20 Q. What about in-person discussions?

21 A. I think we, you know, had sort of --
22 as we walked out of the building, that we had --
23 I don't remember the specifics, but just
24 basically saying good-bye and kind of
25 reiterating the action items that were discussed

1 in the meeting.

2 Q. Did McDonald's believe that after
3 this meeting that litigation was inevitable?

4 MR. WALSH: Objection to the
5 form.

6 MR. KOH: Let me withdraw.

7 BY MR. KOH:

8 Q. After this meeting, did McDonald's
9 reach a decision that it needed to issue a
10 litigation hold?

11 A. I don't --

12 MR. WALSH: Object to the form.

13 A. I don't remember -- I don't recall
14 exactly when that was determined. I don't
15 believe we felt that litigation was inevitable,
16 but -- but, you know, that it was certainly
17 possible.

18 MR. KOH: Okay. All right.

19 It is almost 3:00 o'clock. I'm
20 probably going to turn to another area.
21 So I propose we take a 10-minute break
22 and return at just after 3.

23 THE WITNESS: Thank you.

24 MR. KOH: Thank you.

25 Off the record.

1 (Whereupon, at 2:53 o'clock
2 p.m., a recess was taken until 3:08
3 o'clock p.m.)

4 MR. KOH: Back on the record.

5 Nat, can you please bring up
6 No. 42, and mark it as Exhibit X.

7 (Document bearing Bates
8 stamp MCD002976 through 002998 was
9 marked as Defendant's Exhibit X for
10 identification, as of this date.)

11 BY MR. KOH:

12 Q. Do you recognize Exhibit X,
13 Mr. Meyer?

14 A. I don't -- I'm not sure about the
15 version, but it is an appraisal letter or letter
16 opinion of value from Sharon Locatell.

17 Q. All right.

18 This is also dated June 17th?

19 A. It is dated June 17th.

20 Q. As was Exhibit W, correct?

21 MR. WALSH: Objection to the form
22 and characterization. I don't have the
23 metadata available. I'm not sure what
24 you mean by dated.

25

1 BY MR. KOH:

2 Q. On the first page of Exhibit W, the
3 date says June 17, 2019, correct?

4 A. Correct.

5 Q. That's the first date that appears
6 on the first page of Exhibit X, correct?

7 A. Exhibit X?

8 Q. Yes.

9 A. Exhibit X is dated on the first page
10 of June 17, 2019.

11 Q. So do you have any understanding of
12 the difference between the two documents?

13 MR. WALSH: Objection to the
14 form.

15 A. Between which two documents?

16 BY MR. KOH:

17 Q. W and X.

18 A. Other than one is 9 pages and one is
19 23 pages. That's the only -- I don't know.

20 Q. Did you see Exhibit X before the
21 June 19th meeting?

22 MR. WALSH: Object to the form.

23 A. I'm not sure if I saw this document.

24 BY MR. KOH:

25 Q. You're not sure if you have seen

1 this document at all before or you don't
2 remember the first time?

3 A. I have seen versions of letter
4 opinions of value from Appraisers and Planners.
5 I just don't know if I have seen this particular
6 version.

7 MR. KOH: Let's bring up
8 Exhibit 27, and mark that as Exhibit Y,
9 please.

10 (Document bearing Bates
11 stamp MCD003138 was marked as
12 Defendant's Exhibit Y for
13 identification, as of this date.)

14 BY MR. KOH:

15 Q. Do you recognize Exhibit Y,
16 Mr. Meyer?

17 A. It hasn't popped up yet.

18 Q. Oh. Let us know when it comes up,
19 please.

20 A. Okay.

21 I have Exhibit 27.

22 Q. No, Exhibit Y.

23 A. Document 27, Exhibit Y, okay.

24 Q. Right.

25 A. Okay.

1 Q. So this exhibit contains an e-mail
2 dated June 19th from Ms. Locatell to you and
3 Ms. DeMarco, correct?

4 MR. WALSH: Object to the form.

5 A. Yes, it looks like an e-mail chain
6 between Carol, Sharon, Ellen and myself.

7 BY MR. KOH:

8 Q. Okay.

9 And it says in the 12:41 p.m.
10 e-mail, Ms. Locatell writes "Enjoyed our meeting
11 (believe or not). For the residual analysis, we
12 need to figure out if the site could be
13 developed with a basement. To that end, do you
14 have any site plans or reports that may indicate
15 development likelihood?"

16 Do you see that?

17 A. I do.

18 Q. And Ms. DeMarco writes, "Let me
19 check with construction" -- excuse me, "Let me
20 check with construction team and their file."

21 Do you see that?

22 A. Yes.

23 Q. Do you have any understanding as to
24 why it was important to determine whether the
25 site could be developed with a basement?

1 MR. WALSH: Object to the form
2 and characterization.

3 A. Not to that specific question, but
4 this is again -- relates to our earlier
5 discussion of the June 19th meeting where Tom
6 and Carol -- or, excuse me, Tom and Sharon
7 discussed the land residual as potentially a
8 path, you know, to continue the conversation
9 outside of the lease.

10 BY MR. KOH:

11 Q. And what was it about a basement?

12 Do you have an understanding as to
13 why Ms. Locatell thought that was particularly
14 -- why she wanted to know that information?

15 A. I don't.

16 Q. Do you recall discussing the issue
17 of whether the property could be developed with
18 a basement being discussed by Ms. Locatell?

19 A. No.

20 MR. KOH: Please bring up No. 28,
21 and mark that as Defendant's Exhibit Z.

22 (Document bearing Bates
23 stamp MCD006617 through 006619 was
24 marked as Defendant's Exhibit Z for
25 identification, as of this date.)

1 BY MR. KOH:

2 Q. Do you recognize Defendant's
3 Exhibit Z, Mr. Meyer?

4 A. I'm just scrolling through here. I
5 recognize it.

6 Q. Tell us what it is.

7 A. It is a letter signed by me to
8 Morris Missry.

9 Q. Why did you send this letter on
10 behalf of McDonald's to Mr. Missry?

11 A. It recaps what the lease requires,
12 recaps some of the discussion from the June 19th
13 meeting, including the discussion about whether
14 the property is to be valued as encumbered by
15 the lease, and demands that Vanderbilt cause its
16 appraiser to prepare a new estimate of fair
17 market value consistent with the lease and New
18 York law.

19 Q. Did you have any communications with
20 Mr. Missry between the June 19th meeting and
21 sending this letter?

22 A. It is possible. I don't, I don't
23 recall.

24 Q. Do you have any understanding as to
25 why it took from June 19th to July 23rd to send

1 out a letter that recaps the meeting and makes
2 the demand that it makes?

3 MR. WALSH: Object to the form
4 and characterization.

5 A. I don't, I don't know why -- I don't
6 remember why this was sent on July 23rd
7 specifically.

8 BY MR. KOH:

9 Q. Did you have any discussions with
10 Ms. Locatell between the June 19th meeting and
11 the July 23rd meeting -- I'm sorry, the sending
12 of the July 23rd letter that we have marked as
13 Exhibit Z?

14 A. Between the June 19th meeting and
15 the July 23rd letter?

16 Q. Yes.

17 A. I don't recall any discussions other
18 than e-mails, including the one we just talked
19 about.

20 Q. Okay.

21 Do you recall any other e-mails?

22 A. I'm not sure. I know there were
23 other e-mails, but I don't know the timeframes
24 exactly.

25 Q. Okay.

1 MR. KOH: Let's bring up No. 41,
2 and mark it Exhibit AA.

3 (Document bearing Bates
4 stamp MCD000938 through 000939 was
5 marked as Defendant's Exhibit AA for
6 identification, as of this date.)

7 BY MR. KOH:

8 Q. Do you recognize Exhibit AA,
9 Mr. Meyer?

10 A. I do.

11 Q. Can you tell us what it is?

12 A. It is a letter agreement between
13 Vanderbilt and McDonald's regarding next steps
14 to attempt to compromise on the fair market
15 rental value.

16 Q. And it was countersigned by Tom Li,
17 correct?

18 A. Correct.

19 Q. So let's go through this letter.

20 The first paragraph, No. 1, says
21 "Within three weeks from the date of this
22 letter, each party's appraiser will send to the
23 other party's appraiser his or her respective
24 (i) updated letter opinion of value estimating
25 each appraiser's fair market rental value as

1 defined in the option rent addendum and stating
2 the methodology of valuation and conclusions;
3 and (ii) identifying the comparable transactions
4 on which the conclusions are based."

5 Did that happen?

6 A. I don't, I don't know if it happened
7 in the three weeks.

8 Q. Okay.

9 So when do you believe it did
10 happen?

11 A. I don't, I don't remember the dates,
12 you know, between this date and end of October.
13 I just don't remember the specific date.

14 Q. Other than the timing and when the
15 documents and information might have been
16 exchanged, did each party comply with
17 paragraph 1 of the September 16, 2019 letter
18 which we have marked as Exhibit AA?

19 MR. WALSH: Object to the form.

20 A. I believe -- we received, as
21 discussed earlier, another letter of opinion
22 value done by Tom Tener at some point after
23 this.

24 I assume Sharon sent her or we sent
25 her letter of opinion value to Vanderbilt. I

1 just don't remember the dates.

2 BY MR. KOH:

3 Q. No. 2 says "The respective
4 appraisers will engage in a non-prejudicial and
5 non-binding discussion and engage" -- and excuse
6 me, "and exchange of information for the
7 purposes of assisting the parties in reaching a
8 negotiated FMV as defined in the lease."

9 Did that happen?

10 A. I believe there was a discussion
11 between the appraisers.

12 Q. I take it there was no agreement
13 concerning the FMV as defined in the lease?

14 A. Correct.

15 Q. No. 3 says "The parties have
16 selected Marc Nakleh as the third appraiser
17 pursuant to the terms of the lease and agree to
18 engage Mr. Nakleh within 21 days of this
19 agreement."

20 Did that happen?

21 A. No.

22 Q. Okay.

23 Did the parties, in fact, select
24 Mr. Nakleh?

25 A. Tom Tener and Sharon selected Marc

1 Nakleh.

2 Q. But he was not engaged within 21
3 days of the agreements?

4 A. Correct.

5 Q. Was Mr. Nakleh ever engaged?

6 A. No.

7 Q. Why not?

8 A. Because Vanderbilt continued to
9 argue their position that the option rent
10 addendum requires an exchange of letter opinions
11 of value without discussion between the
12 appraisers.

13 Q. So, am I correct to say that -- am I
14 correct in saying that it was McDonald's who
15 would not agree to engage Mr. Nakleh?

16 MR. WALSH: Object to the form.

17 A. That's not correct.

18 BY MR. KOH:

19 Q. It's not correct.

20 Was it Vanderbilt who refused to
21 engage Mr. Nakleh?

22 A. Vanderbilt refused to comply with
23 the lease.

24 Q. What specific -- did Vanderbilt
25 comply with the September 16th agreement marked

1 as Defendant's Exhibit AA?

2 MR. WALSH: Object to the form
3 and to the extent it calls for a legal
4 conclusion.

5 A. Marc Nakleh was not engaged.

6 BY MR. KOH:

7 Q. I understand that. We answered
8 that.

9 My question was, did Vanderbilt fail
10 to comply with Defendant's Exhibit AA?

11 MR. WALSH: Same objection.

12 A. I don't understand the question.
13 Paragraph 3 says that the parties have selected
14 Marc Nakleh. Then it says "and agree to engage
15 Mr. Nakleh within 21 days of this agreement."

16 And he was not engaged. So no, they
17 did not comply with the letter.

18 BY MR. KOH:

19 Q. And your testimony was that that was
20 because, in McDonald's view, Vanderbilt did not
21 comply with the lease; is that correct?

22 MR. WALSH: Object to the form
23 and characterization.

24 A. Correct. They would not engage
25 Mr. Nakleh in a way that was required by the

1 lease.

2 BY MR. KOH:

3 Q. Is there anything in Defendant's
4 Exhibit AA that requires Vanderbilt to engage
5 Mr. Nakleh in a particular way?

6 MR. WALSH: Object to the form.

7 A. Yes, it says that the parties intend
8 to retain him upon agreement regarding the
9 process as set forth in the lease.

10 BY MR. KOH:

11 Q. And was that intent condition
12 precedent to the obligation to engage
13 Mr. Nakleh?

14 MR. WALSH: Object to the form
15 and to the extent it calls for a legal
16 conclusion.

17 BY MR. KOH:

18 Q. Do you understand what I mean by
19 condition precedent, Mr. Meyer?

20 A. Not really. There had to be an
21 agreement regarding the process set forth in the
22 lease in order for the parties to engage
23 Mr. Nakleh, and there was no agreement regarding
24 the process.

25 Q. Where did it say there had to be an

1 agreement?

2 A. It says "The parties further agree
3 that their appraisers shall jointly communicate
4 with Mr. Nakleh that the parties intend to
5 retain him upon agreement regarding the process
6 set forth in the lease."

7 Q. Why was there a failure to agree on
8 the process set forth in the lease?

9 MR. WALSH: Object to the form.

10 A. Because Vanderbilt continued to
11 assert their position that there could be no
12 discussion between the three appraisers.

13 MR. KOH: Okay.

14 Let's bring up the document
15 that's in the stack as No. 30, and we'll
16 mark that as Exhibit BB.

17 (Document bearing Bates
18 stamp MCD000317 through 000342 was
19 marked as Defendant's Exhibit BB for
20 identification, as of this date.)

21 BY MR. KOH:

22 Q. Do you recognize Exhibit BB,
23 Mr. Meyer?

24 A. This is a letter opinion of value
25 with the date of September 20, 2019 on the first

1 page from Appraisers and Planners.

2 Q. Was this the letter opinion of value
3 that was sent pursuant to the agreement that we
4 were just looking at which is marked as
5 Exhibit AA?

6 A. I'm not sure if this was the version
7 that was sent.

8 Q. Okay.

9 MR. KOH: Let's bring up 31, and
10 mark that as Exhibit CC.

11 (Document bearing Bates
12 stamp MCD008060 through 008061 was
13 marked as Defendant's Exhibit CC for
14 identification, as of this date.)

15 BY MR. KOH:

16 Q. Do you recognize Exhibit CC?

17 A. It looks like an e-mail chain
18 between Morris Missry and myself.

19 Q. And that was sent on or about -- or
20 you responded to Mr. Missry on or about
21 October 21, 2019?

22 A. Correct.

23 Q. And what were you and Mr. Missry
24 trying to communicate at or about -- when this
25 e-mail was sent?

1 A. I just want to read Morris' e-mail.
2 I think he's trying to schedule a call.

3 Q. And the call was going to include
4 Ms. Locatell and Mr. Tener?

5 A. That was his request, I think, based
6 on my e-mail response.

7 Q. Did you have any understanding of
8 what the agenda of the call would be?

9 A. I'm a little confused. It looks as
10 though there's an e-mail missing at the bottom.
11 October 18, 2019 at 9:59 a.m. Morris Missry
12 wrote -- blank.

13 But so, no, I don't know what
14 exactly the agenda would be.

15 Q. Okay.

16 That's how it came to us. There's a
17 long website there.

18 Do you have any idea what that was?

19 A. It is wmlp.com. Url, which would
20 be Wachtel Missry LLP. So I don't know what
21 that link is for.

22 Q. All right.

23 MR. KOH: Please bring up No. 32,
24 and mark that as Exhibit DD.

25 (Document bearing Bates

1 stamp MCD000543 through 000579 was
2 marked as Defendant's Exhibit DD for
3 identification, as of this date.)

4 BY MR. KOH:

5 Q. Exhibit DD appears to be a series of
6 handwritten notes. Look through that document
7 and tell me if you know whose notes these are.

8 MR. WALSH: Howard, just a
9 technology question here. I see a bunch
10 of people looking sideways. There
11 doesn't seem to be a way for us to
12 rotate the document because it is not
13 all the same orientation.

14 Do you know if that's possible?

15 MR. KOH: Nat might be better. I
16 see that on my screen. I believe I have
17 that, the ability to rotate those
18 documents.

19 Nat, do you know?

20 MAGNA TECH: At the top of the
21 screen right next to the Zoom percentage
22 option on the left-hand side, there
23 should be an arrow with half a circle
24 almost.

25 MR. KOH: I'm seeing an expand

1 page vertical arrow and a horizontal
2 arrow, but I don't see the rotate coming
3 up on my screen.

4 MR. WALSH: So this is Brendan.
5 That actually was helpful.

6 There's a link, at least on the
7 way I can view it. Next to the Zoom
8 level, there's -- if you hover over, it
9 says document options and then it gives
10 me an option. It says orientation, and
11 I can either rotate page --

12 MR. KOH: Yes, there it is.

13 MR. WALSH: But I can rotate it.

14 Mr. Meyer and anybody else, to
15 the extent that you need to rotate it,
16 either you can try to do it yourself or
17 you can ask.

18 MR. KOH: I bet if you put that
19 on a landscape screen, those options may
20 spell out or populate.

21 BY MR. KOH:

22 Q. In any event, the question is,
23 Mr. Meyer, do you recognize whose notes these
24 are?

25 A. I see some e-mails that are only --

1 that only include Sharon. So that would be my
2 guess, but I really don't know.

3 Q. Okay.

4 MR. KOH: Let's put that document
5 away and bring up No. 33, and mark it as
6 Exhibit EE, which is the Complaint in
7 this action.

8 (Complaint was marked as
9 Defendant's Exhibit EE for
10 identification, as of this date.)

11 A. Okay.

12 BY MR. KOH:

13 Q. All right.

14 I assume you have seen the Complaint
15 before?

16 A. Yes.

17 Q. And did you review it before it was
18 filed with the court?

19 A. Yes.

20 Q. Did you speak with anybody else
21 concerning the substance of this Complaint at
22 McDonald's before it was filed with the courts?

23 MR. WALSH: Object insofar as it
24 requests information that may be covered
25 by the attorney/client privilege, but --

1 MR. KOH: First of all, I just
2 want to know if he spoke to anybody, and
3 then my next question is going to be
4 who. And then I'll stop asking
5 questions. So I'm taking it one at a
6 time.

7 BY MR. KOH:

8 Q. Did you speak to anybody at
9 McDonald's concerning this Complaint before it
10 was filed?

11 A. Yes.

12 Q. Who was that?

13 A. You want me to list them?

14 Q. Yes. If you can, give me the names
15 unless you want to claim a privilege on the
16 names alone.

17 MR. WALSH: No, and I can jump in
18 real quick. I don't believe that we
19 have any basis to claim privilege over
20 actual names.

21 I just would caution Mr. Meyer
22 not to reveal the content of any
23 discussions you may have had with any
24 attorneys, either in house at McDonald's
25 or outside counsel.

1 A. So I would have spoke to Monica
2 Mosby, Sara Lee, Hal Merck, Mahrukh Hussain.

3 BY MR. KOH:

4 Q. Sorry, what was that name?

5 A. Mahrukh Hussain.

6 Q. Okay.

7 A. Carol, I believe. Dave Kearns. I
8 may be forgetting some.

9 Q. Who is Monica Mosby?

10 A. She is an attorney in our litigation
11 department.

12 Q. And who is Sara Lee?

13 A. She is an attorney in the asset
14 management legal team.

15 Q. Okay.

16 You said Mahrukh Hussain?

17 A. Mahrukh. M-a-h-r-u-k-h, I believe.
18 H-u-s-s-e-i-n.

19 Q. And who is Mahrukh Hussain?

20 A. At the time, she was the general
21 counsel for the U.S. McDonald's business.

22 Q. All right.

23 Let's turn to paragraph 28 of that
24 Complaint, and read it to yourself.

25 A. Okay.

1 Q. What were the factual basis or bases
2 for the allegations in paragraph 28 of the
3 Complaint?

4 MR. WALSH: Object to the form,
5 but you can answer, if you recall.

6 A. With regard to Vanderbilt entering
7 into a new 99-year ground lease for the
8 property, I believe we learned that via the
9 research that Appraisers and Planners had at the
10 outset seen, the acris forms showing the
11 transfer.

12 BY MR. KOH:

13 Q. You mentioned acris, a-c-r-i-s?

14 A. Yes.

15 Q. I just want to make sure that comes
16 out right in the transcript.

17 A. And then with respect to the goal of
18 having the property rezoned for the purpose of
19 developing the property with a more lucrative
20 high-density residential building, that was
21 based on public news articles about Vanderbilt
22 seeking an up zone of the property.

23 Q. Do you remember specifically what
24 articles McDonald's saw that it used as the
25 basis for that allegation?

1 MR. WALSH: Object to the form
2 and characterization.

3 BY MR. KOH:

4 Q. What articles were you referring to,
5 if you remember?

6 A. I don't remember the specific
7 publications, but there were at least one
8 article that was describing the Vanderbilt's
9 plans and I believe also had discussion about
10 the -- I think it was community board hearings
11 or meetings on the topic.

12 Q. Paragraph 29, that says "Public
13 records reveal that during the period from
14 August 3, 2018 through August 31, 2019,
15 Vanderbilt paid the lobbying firm Slater &
16 Beckerman, P.C. in excess of \$50,000 to lobby
17 city and state officials on land use matters,
18 including rezoning, related to the property and
19 adjacent properties."

20 What public records were you
21 referring to or was McDonald's referring to?

22 A. I'm not sure.

23 Q. Paragraph 30 reads "Upon information
24 and belief, Vanderbilt has already presented
25 plans to various city and community officials

1 for a 19-story building on the property in place
2 of the existing McDonald's restaurant."

3 What information was McDonald's
4 relying upon for that allegation?

5 MR. WALSH: Object to the form.

6 A. I believe it was the news articles,
7 and then I think there were also public records
8 of the community board meetings. But I know for
9 certain that it was based on the articles.
10 Article or articles.

11 BY MR. KOH:

12 Q. Paragraph 32, McDonald's alleges
13 "Upon information and belief, Vanderbilt is
14 determined to cause McDonald's to vacate the
15 property substantially earlier than April 2039."

16 What was the information that
17 McDonald's was relying upon to make that
18 allegation?

19 MR. WALSH: Object to the form.

20 A. Vanderbilt's behavior in trying to
21 set -- I told you this was going to happen.

22 BY MR. KOH:

23 Q. That's okay. Dogs do that. That's
24 why I don't have one.

25 A. Sorry, can you repeat the question?

1 Q. Well, there are a number of
2 reasons -- sure.

3 Paragraph 32 -- let me rephrase
4 that.

5 In paragraph 32, McDonald's alleges
6 "Upon information and belief, Vanderbilt is
7 determined to cause McDonald's to vacate the
8 property substantially earlier than April of
9 2039."

10 What was the information that
11 McDonald's was relying upon to make that
12 allegation?

13 MR. WALSH: Object to the form
14 and characterization.

15 A. A combination of things.

16 One, the discussions that Carol had
17 with Sam Rottenberg, you know, in the
18 negotiation period under the lease, you know,
19 where he was focused on what was McDonald's
20 going to do if, if the rent was too high for
21 their liking; the behavior during the attempt to
22 set the rent; the fact that during all of this,
23 Vanderbilt was seeking to rezone the property
24 and build a development that would not include
25 McDonald's.

1 BY MR. KOH:

2 Q. Anything else?

3 MR. WALSH: Object to the form.

4 A. I think that's it.

5 BY MR. KOH:

6 Q. The date April 2039 appears in
7 paragraph 32.

8 Why that date?

9 A. That's the date on which -- or the
10 month on which all of McDonald's options under
11 the ground lease expire.

12 Q. Is it fair to say that under the
13 ground lease, McDonald's controls the use of the
14 property through April 2039?

15 MR. WALSH: Object to the form.

16 A. McDonald's has a series of five-year
17 options that, if exercised, allow us to remain
18 on the property until April of 2039.

19 BY MR. KOH:

20 Q. Provided McDonald's pays the rent
21 and otherwise complies with the lease, correct?

22 MR. WALSH: Object to the form.

23 A. Correct.

24 BY MR. KOH:

25 Q. Turn to paragraph 46. That's on

1 page 10. Paragraph 46 says "Under New York law
2 and the plain language of the lease, the
3 parties' appraisers are required to determine
4 FMV, giving consideration to all encumbrances on
5 the property, including current zoning
6 regulations and the existence of the lease
7 itself."

8 Can you tell us what New York law
9 paragraph 46 refers to?

10 MR. WALSH: Object to the form.

11 A. The Second Avenue case that we have
12 been referencing is the -- is what comes to
13 mind. There may be other cases similar.

14 BY MR. KOH:

15 Q. And what language of the lease is
16 McDonald's referring to in that paragraph?

17 MR. WALSH: Object to the form.

18 A. The fact that the lease does not
19 specifically state that the property is to not
20 be valued as an unencumbered by the lease.

21 BY MR. KOH:

22 Q. Paragraph 59 of the Complaint marked
23 as Exhibit EE reads "Vanderbilt advised
24 McDonald's at that time that it had directed its
25 appraiser, Mr. Tener, to prepare a new FMV

1 estimate in accordance with the terms of the
2 lease and New York law."

3 Do you see that?

4 A. Yes.

5 Q. First of all, who specifically on
6 behalf of Vanderbilt advised, advised McDonald's
7 of those purported facts?

8 A. Morris Missry.

9 Q. Did Mr. Missry -- did anybody else
10 besides Mr. Missry give that advice to
11 McDonald's?

12 MR. WALSH: Object to the form.

13 A. Not that I am aware of.

14 BY MR. KOH:

15 Q. Okay.

16 Specifically as you can, tell us
17 what Mr. Missry said when he advised McDonald's
18 that it had given its appraiser directions.

19 A. This was an ongoing discussion
20 between myself and Morris Missry starting with
21 the June 19th meeting when he said he would
22 consider the New York law that I cited in that
23 meeting.

24 Thereafter, I continued to press him
25 on that issue. And eventually, I believe it was

1 on a phone call, he said, you know, to the
2 effect of we'll concede that and we'll have Tom
3 Tener redo his appraisal.

4 Q. What exactly did Mr. Missry say he
5 would concede?

6 A. That the Second Avenue case applies
7 to this situation and that the property is to be
8 valued as encumbered by the lease, current
9 zoning and current zoning.

10 Q. Was this purported concession ever
11 reduced to a writing anywhere by anyone?

12 A. I don't believe -- I don't recall
13 Morris reducing this to a writing.

14 Q. Did you reduce it to a writing?

15 A. Yes.

16 Q. Can you describe that writing for
17 me?

18 A. Not without revealing privileged
19 information.

20 Q. Was this writing ever sent to anyone
21 else besides McDonald's?

22 A. Counsel.

23 Q. So it was never sent to Mr. Missry?

24 A. I don't recall if I sent him a
25 separate writing. I know I followed up on this

1 multiple times.

2 Q. How did you follow up?

3 A. Phone calls and I believe e-mails.

4 Q. Did Mr. Missry ever countersign any
5 agreements that memorialized his purported
6 concession?

7 A. Not that I recall.

8 Q. Did he ever send you an e-mail --
9 did Mr. Missry ever send you an e-mail stating
10 that he was making this concession that you
11 described?

12 A. Not that I recall.

13 Q. Okay.

14 Let's look at paragraph 65.

15 Paragraph 65, you write "But neither
16 Vanderbilt" -- I'm sorry, let me rephrase.

17 Paragraph 65 of McDonald's Complaint
18 alleges "But neither Vanderbilt nor Mr. Tener
19 has explained why the commercial ground leases
20 that Ms. Locatell considered in arriving at her
21 FMV estimate for the property, which McDonald's
22 has identified to Vanderbilt, are not
23 comparable, or why Mr. Tener could not use any
24 of the 50 comparable leases he claims to have
25 used in his previous analysis to support an

1 8 percent capitalization rate."

2 Do you see that?

3 A. Yes.

4 Q. Does this still accurately describe
5 McDonald's position?

6 MR. WALSH: Object to the form.

7 A. Yes.

8 BY MR. KOH:

9 Q. So as we sit here today, McDonald's
10 has never received an explanation from
11 Vanderbilt or Mr. Tener as to why he considered
12 Ms. Locatell's commercial ground leases to be
13 inappropriate comps?

14 MR. WALSH: Object to the form.

15 BY MR. KOH:

16 Q. Is that correct, Mr. Meyer?

17 A. As far as I know.

18 Q. Okay.

19 Is it also true, as you sit here
20 today, McDonald's has never received an
21 explanation from either Vanderbilt or Mr. Tener
22 as to why Mr. Tener has not used any of the
23 purported 50 comparable leases to support an
24 8 percent capitalization rate?

25 MR. WALSH: Object to the form.

1 A. He has not explained why those
2 leases were comparable for the purposes of
3 determining an 8 percent capitalization rate,
4 but that they were not comparable in order to
5 use them as comparable leases pursuant to the
6 option rent addendum.

7 BY MR. KOH:

8 Q. Thank you.

9 Go to paragraph 78. McDonald's
10 alleges that "Vanderbilt has failed to cooperate
11 in good faith by, among other things, not
12 appraising FMV in accordance with the lease, New
13 York law, and usual customary appraisal
14 practices."

15 Do you see that?

16 A. Yes.

17 Q. What usual and customary appraisal
18 practices is McDonald's referring to there?

19 MR. WALSH: Object to the form.

20 A. I don't know specifically, but we
21 found many comparable -- or Sharon found many
22 comparable leases, and none of them were used by
23 Tom Tener's appraisal, is what I read that to
24 mean.

25

1 BY MR. KOH:

2 Q. And isn't it possible that Mr. Tener
3 could have, for whatever reason, concluded those
4 leases were not valid comparables?

5 MR. WALSH: Object to the form.

6 A. I don't know.

7 BY MR. KOH:

8 Q. Have you ever heard the phrase pad
9 lease before?

10 A. Yes.

11 Q. What do you understand pad lease to
12 mean?

13 A. It means -- I mean, I've heard it in
14 many contexts, but it would be as opposed to a
15 lease that is part of the larger building. I
16 sort of see it synonymous with ground lease.

17 Q. Earlier in your deposition you
18 testified about a remodeling of the McDonald's
19 restaurant at 840 Atlantic Avenue.

20 To your knowledge, has that
21 remodeling been completed?

22 A. Yes.

23 Q. Do you have any understanding of
24 what the cost of that remodeling was?

25 MR. WALSH: Object to the form

1 and insofar as it is outside of the
2 30(b)(6) notice.

3 But Mr. Meyer can answer, if he
4 has knowledge.

5 BY MR. KOH:

6 Q. Do you know what the cost of the
7 remodeling was, Mr. Meyer?

8 A. I believe I know the approximate
9 amount of the remodel.

10 Q. Tell us what you know.

11 A. I believe it was in excess of a
12 million five. I don't recall the specific
13 number.

14 Q. How about in excess of a million and
15 a half dollars --

16 A. Yes.

17 Q. -- but less than two million.

18 Is that your recollection?

19 MR. WALSH: Object to the form.

20 A. Yes.

21 BY MR. KOH:

22 Q. And who paid that?

23 A. I don't know specifically in this
24 case, but typically it would be -- it would be
25 paid between the franchisee and McDonald's.

1 And at various times there's an
2 agreement between the franchisees and McDonald's
3 as to what percentage McDonald's will pay and
4 what percentage a franchisee will pay, but that
5 kind of changes from time to time depending on,
6 you know, what initiatives are going on.

7 Q. Does McDonald's from time to time
8 finance the franchisee's portion of these
9 remodels?

10 MR. WALSH: Object to the form.

11 A. I don't, I don't know what you mean
12 by finance.

13 BY MR. KOH:

14 Q. Give a loan to the franchisee to pay
15 for the franchisee's portion which the
16 franchisee must pay back.

17 MR. WALSH: Object to the form.

18 A. I think in some cases there is a
19 payment over time, but I don't -- I don't
20 believe there's -- I don't know if there's an
21 interest like you would typically see, you know,
22 in the quote/unquote financing.

23 BY MR. KOH:

24 Q. Do you know if with this particular
25 remodel the franchisee was permitted to pay its

1 share of the remodeling costs over time?

2 A. I don't know in this case.

3 MR. WALSH: Object to the form.

4 BY MR. KOH:

5 Q. Bear with me for a moment, please.

6 Did you discuss the 936 Second

7 Avenue case with Ms. Locatell?

8 A. I believe so.

9 Q. What do you recall discussing with
10 her?

11 MR. WALSH: Object to the form.

12 MR. KOH: I'll withdraw.

13 BY MR. KOH:

14 Q. What about the 936 Second Avenue
15 case did you discuss with Ms. Locatell?

16 MR. WALSH: Object to the form.

17 A. I don't remember specifically, but
18 just in general that it was applicable.

19 BY MR. KOH:

20 Q. Did you give any instructions to
21 Ms. Locatell concerning how she was to prepare
22 her opinion of value under the option rent term
23 agreements?

24 A. Can you repeat that?

25 Q. Yes.

1 Did you give any instructions to
2 Ms. Locatell concerning how she was to prepare
3 the opinion of value for the FMV process?

4 MR. WALSH: Object to the form.

5 A. No, no instructions about how she
6 was to prepare her letter opinion of value.

7 BY MR. KOH:

8 Q. Did you discuss with Ms. Locatell
9 what impact any encumbrances on the property
10 might have concerning the fair market value of
11 the property at 840 Atlantic Avenue?

12 A. Not that I recall.

13 Q. Did you discuss the length of the
14 encumbrance at the property at 840 Atlantic
15 Avenue resulting from the option rent provisions
16 in the lease with Ms. Locatell?

17 MR. WALSH: Object to the form.

18 MR. KOH: Let me rephrase that.

19 BY MR. KOH:

20 Q. Did you and Ms. Locatell discuss how
21 long McDonald's lease encumbered the property at
22 840 Atlantic Avenue?

23 MR. WALSH: Object to the form.

24 A. I still don't understand the
25 question. Sorry.

1 BY MR. KOH:

2 Q. You understand that there are four
3 five-year option terms under the lease, correct?

4 A. Correct.

5 Q. Did you have any discussions with
6 Ms. Locatell concerning whether the encumbrance
7 created by the option term should be a five-year
8 period or a 20-year period?

9 MR. WALSH: Object to the form.

10 A. I don't recall any specific
11 discussions, but we certainly -- I mean, it
12 would have been left to her judgment as to the
13 time period.

14 BY MR. KOH:

15 Q. I understand it would ultimately be
16 left to her judgment.

17 My question was do you recall any
18 discussions about that issue with Ms. Locatell?

19 MR. WALSH: Object to the form.

20 A. Like I said, I don't recall any
21 specific discussions.

22 BY MR. KOH:

23 Q. Besides yourself, who else from
24 McDonald's had discussions with Ms. Locatell
25 concerning this assignment?

1 A. I believe only Carol DeMarco.

2 Q. Do you remember Ms. DeMarco giving
3 any instructions to Ms. Locatell concerning this
4 assignment?

5 MR. WALSH: Object to the form.

6 A. No, no instructions.

7 BY MR. KOH:

8 Q. Do you remember if -- strike that.

9 Were you present during any
10 conversations between Ms. DeMarco and
11 Ms. Locatell where the subject of how to prepare
12 Ms. Locatell's appraisal came up?

13 MR. WALSH: Object to the form.

14 A. No.

15 MR. KOH: All right.

16 We have been going for about
17 probably 70 minutes. I think it would
18 be a good time to take our next break so
19 I can review where I am and see how much
20 I have to do.

21 So why don't we take -- let's
22 take 10 minutes and come back at 4:20.

23 MR. WALSH: Okay. Thank you.

24 MR. KOH: Thank you.

25 Off the record.

1 (Whereupon, at 4:10 o'clock
2 p.m., a recess was taken until 4:24
3 o'clock p.m.)

4 MR. KOH: Back on the record.

5 I have decided that I have
6 concluded. So, we can put that on the
7 record.

8 But, Brendan, do you have any
9 questions for your witness?

10 MR. WALSH: You know, I expect
11 to. One question that I have is just
12 more technology. If I wanted to show
13 Mr. Meyer some documents that have not
14 been introduced yet, how would I do
15 that?

16 Because I think I do want to ask
17 him just a few questions. I think it
18 will take only a few minutes.

19 And I think there are some
20 documents that have not been marked that
21 I may want to ask him some questions
22 about.

23 MR. KOH: All right.

24 Nat, if you have views, you can
25 also e-mail them to me and I can get

1 them uploaded and I can bring them up
2 for you. Beyond that, I'm not sure.

3 MAGNA TECH: One of the options,
4 you can just e-mail me and we can add
5 them on to AgileLaw. If you want it to
6 be quicker, you can also -- I don't know
7 if you would want to do this or if you
8 want me to go ahead and do it for you,
9 you can share your screen if you have
10 them right in front of you. It really
11 just depends how you feel more
12 comfortable using the exhibits.

13 MR. WALSH: If we e-mail them to
14 you, could you -- it is probably easier
15 as long as -- I guess it looks like we
16 ended our exhibits the last time around
17 P-38. So the first exhibit is P-39.

18 Can we keep the designation
19 instead of the letters that Mr. Koh has
20 been using?

21 MR. KOH: The answer to that is
22 I'm sure you can. I have no objection.

23 MAGNA TECH: I can add the label
24 and just put P-39 on it.

25 MR. WALSH: I think what we'll do

1 is -- I think there's two documents.

2 What e-mail address should we
3 send them to you?

4 MAGNA TECH: I'll drop my e-mail
5 in the chat right now. One second.

6 You can send it to that e-mail,
7 and then I'll just need a couple minutes
8 to add them to AgileLaw and I can
9 display them for you.

10 MR. WALSH: I'll just refer to
11 them by Bates number when I introduce
12 them.

13 MAGNA TECH: Does the file name
14 have the Bates number?

15 MR. WALSH: Yes, they do.

16 MAGNA TECH: Perfect.

17 MR. WALSH: I just hit send.

18 And then if you could just put
19 me, Ms. Howard, Ms. Alvarez in a
20 breakout room, and we'll come back in
21 just a few minutes. We just want to
22 make sure we're all on the same page.

23 MAGNA TECH: No problem.

24 MR. WALSH: Off the record.

25 (Whereupon, at 4:28 o'clock

1 p.m., a recess was taken until 4:31
2 o'clock p.m.)

3 MR. WALSH: Back on the record.

4

5 EXAMINATION BY MR. WALSH:

6 Q. Mr. Meyer, I just wanted to clarify
7 a few different things. I don't have the
8 transcript in front of me, but I have some
9 questions about things I thought I may have
10 heard you say, and I just wanted to just clarify
11 a couple of things.

12 First, there was a question early on
13 in the deposition about what Mr. Koh marked as
14 Exhibit G, and that is a May 10, 2018 letter
15 from Vanderbilt to McDonald's in which it said
16 it determined the FMV of the premises is
17 \$975,000.

18 And I thought I heard you say that
19 Ms. Locatell or an analysis she had done was
20 used at that time to, I guess, make the decision
21 by McDonald's not to countersign that.

22 MR. WALSH: Magna, if you can
23 pull up the document MCD 003848, and
24 mark that as P-39.

25 (Document bearing Bates

1 stamp MCD 003848 through 003852 was
2 marked as Exhibit P-39 for
3 identification, as of this date.)

4 BY MR. WALSH:

5 Q. Mr. Meyer, please take a look at
6 this e-mail and attachment. If you could just
7 take a look and let me know when you're ready.

8 A. My screen says presenter has locked
9 your screen.

10 Now I've got it. All right. P-39.

11 MR. WALSH: Just for the record,
12 it is a five-page exhibit, MCD 003848
13 and then ending at 3852.

14 BY MR. WALSH:

15 Q. And this is an e-mail chain and
16 attachment. It looks like an engagement letter
17 with Ms. Locatell from October 2018; is that
18 right?

19 A. That's right.

20 Q. So does this refresh your
21 recollection as to when McDonald's began working
22 with Ms. Locatell in relation to, you know, 840
23 Atlantic Avenue?

24 A. Yes.

25 Q. And when did McDonald's begin

1 working with Ms. Locatell on the 840 Atlantic
2 Avenue property?

3 A. On or around October 2018.

4 Q. Okay.

5 So was Ms. Locatell involved in May
6 of 2018?

7 A. It looks like no.

8 Q. Okay.

9 Again, my notes may be wrong, but I
10 thought I heard you testify during the
11 deposition that McDonald's first learned that
12 Vanderbilt acquired the lease, the McDonald's
13 lease and its own ground lease, in I thought you
14 said the end of December 2018.

15 MR. WALSH: Magna, if you could
16 please introduce MCD 006017 as P-40.

17 (Document bearing Bates
18 stamp MCD 006017 was marked as
19 Exhibit P-40 for identification, as
20 of this date.)

21 BY MR. WALSH:

22 Q. Mr. Meyer, if you could, please
23 review this e-mail.

24 A. Okay.

25 Q. Does this refresh your recollection

1 about when McDonald's learned that Vanderbilt
2 had acquired the McDonald's lease or had become
3 McDonald's landlord?

4 A. Yes.

5 Q. And what is your recollection now
6 that you have seen this document?

7 A. That we learned that in January of
8 2018. I think I was referencing the details of
9 the transfer from the acris forms previously as
10 opposed to when we learned that Vanderbilt was
11 the landlord.

12 Q. Okay.

13 And then, finally, there's been some
14 discussion today about the two analyses that
15 Ms. Locatell sent to McDonald's in December of
16 2018.

17 What was the purpose of having her
18 prepare those analyses at that time?

19 A. The purpose -- I think multiple
20 purposes, but -- and those were, on one hand,
21 Carol was in the midst of negotiating with Sam
22 the fair market rental value.

23 So she wanted to have an
24 understanding, you know, of what, you know -- a
25 third-party understanding of valuation.

1 And also, we were -- she was getting
2 ready to get approvals to exercise the blind
3 fair market value, blind fair market value
4 option. And so, needed to populate the
5 reacquisition package with, you know, a range of
6 potential fair market value rents, you know, up
7 to the, you know, what could be the worst case
8 to, I guess, what could be the best case.

9 Q. Okay.

10 And at that time in December of
11 2018, had McDonald's given Ms. Locatell any
12 instructions on how to factor in the encumbrance
13 of the lease or current zoning?

14 A. No, at that point we were not
15 focused on the formal process. We were focused
16 on, like I said, the negotiation and the
17 exercise of the blind fair market value option.

18 MR. WALSH: Okay.

19 I don't believe I have any
20 further questions.

21 MR. KOH: I may have a follow-up.
22 Bear with me.

23 Yes, one follow-up.

24

25 FURTHER EXAMINATION BY MR. KOH:

1 Q. Mr. Meyer -- maybe more than one.
2 The question is, did there ever come a time when
3 McDonald's gave Ms. Locatell any instructions on
4 how to factor in the encumbrance of the lease or
5 current zoning?

6 MR. WALSH: Objection to form.

7 A. No, not instructions about how to
8 incorporate the encumbrance of the lease or
9 current zoning. Just that that Second Avenue
10 case required that the valuation incorporate the
11 encumbrance of the lease and current zoning.

12 BY MR. KOH:

13 Q. And when did that discussion occur
14 in the process?

15 A. I don't remember the exact date, but
16 sometime in -- prior to that June 19th meeting.

17 MR. KOH: Okay.

18 I don't have anything further.

19 MR. WALSH: Okay.

20 MR. KOH: All right. This
21 deposition is concluded.

22 Off the record.

23 (Whereupon, at 4:42 o'clock
24 p.m., the deposition was concluded.)

25

INSTRUCTIONS TO WITNESS

Read your deposition over carefully. It is your right to read your deposition and make changes in form or substance. You should assign a reason in the appropriate column on the errata sheet for any change made.

After making any change in the form or substance, and which have been noted on the following errata sheet, along with the reason for any change, sign your name on the errata sheet and date it.

Then sign your deposition at the end of your testimony in the space provided. You are signing it subject to the changes you have made in the errata sheet, which will be attached to the deposition before filing. You must sign it in front of a notary public. Any competent adult may witness your signature.

Return the original errata sheet to the court reporter promptly. Court rules require filing within 30 days after you receive deposition.

1	ERRATA SHEET			
2				
3	PAGE	LINE#	CHANGE	REASON
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1 SIGNATURE PAGE
2 OF
3 MICHAEL MEYER
4

5 I hereby acknowledge that I have read the
6 foregoing deposition, dated August 17, 2021, and
7 that the same is a true and correct transcription
8 of the answers given by me to the questions
9 propounded, except for the changes, if any, noted
10 on the attached errata sheet.
11
12

13 SIGNATURE: _____

14 WITNESSED BY: _____

15 DATE: _____
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1 C E R T I F I C A T E

2 STATE OF NEW JERSEY)

3) SS:

4 COUNTY OF MONMOUTH)

5

6 I, CATHERINE M. DONAHUE, a Certified Court
7 Reporter and Notary Public within and for the
8 State of New Jersey, do hereby certify:

9 That the witness whose deposition is
10 hereinbefore set forth was duly sworn by me and
11 that such deposition is a true record of the
12 testimony given by such witness.

13 I further certify that I am not related to
14 any of the parties to this action by blood or
15 marriage, and that I am in no way interested in
16 the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 26th day of August, 2021.

19

20

CATHERINE M. DONAHUE, CCR

21 License No. 30X100223700

22

23

24

25

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